

**ALAMEDA COUNTY FLOOD CONTROL &  
WATER CONSERVATION DISTRICT  
ENGINEERING PROFESSIONAL SERVICES  
REQUEST FOR PROPOSAL AND STATEMENT OF QUALIFICATIONS**

**SPECIFICATIONS, TERMS & CONDITIONS  
for  
*Construction Management Services***

**NETWORKING/PROPOSERS CONFERENCES  
At**

**2:00 p.m.  
on**

**Tuesday November 4, 2014  
At**

**951 Turner Court, Hayward CA, Room 300**

**2:00 p.m.  
on**

**Wednesday November 12, 2014  
At**

**951 Turner Court, Hayward, CA Room 300**

**For complete information regarding this project see RFP/Q posted at  
<http://acgov.org/pwa/business/services.htm> or contact the person listed below. Thank  
you for your interest!**

**Contact Person: Stanley Fung, Principal Civil Engineer  
Phone Number: 510-670-5513  
Email Address: [stanley@acpwa.org](mailto:stanley@acpwa.org)**

**RESPONSE DUE**

**by**

**2:00 p.m.**

**on**

***Tuesday December 9, 2014***

**at**

**Alameda County Public Works Agency  
951 Turner Court, Room 300  
Hayward, CA 94545**

**ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT**  
**ENGINEERING PROFESSIONAL SERVICES**  
**REQUEST FOR PROPOSAL AND STATEMENT OF QUALIFICATIONS**  
**SPECIFICATIONS, TERMS & CONDITIONS**  
**For**  
**CONSTRUCTION MANAGEMENT SERVICES**

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**ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT  
ENGINEERING PROFESSIONAL SERVICES  
REQUEST FOR PROPOSAL AND STATEMENT OF QUALIFICATIONS  
SPECIFICATIONS, TERMS & CONDITIONS  
For  
CONSTRUCTION MANAGEMENT SERVICES**

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**I. ACRONYM AND TERM GLOSSARY**

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

|                      |                                                                                                                                                                                                  |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A/E                  | Architecture(-al) and Engineer(-ing)                                                                                                                                                             |
| Board                | Shall refer to the Alameda County Flood Control and Water Conservation District Board of Supervisors                                                                                             |
| DSC                  | Shall refer to District Selection Committee                                                                                                                                                      |
| Contractor           | When capitalized, shall refer to selected Proposer that is awarded a contract                                                                                                                    |
| County               | When capitalized, shall refer to the County of Alameda                                                                                                                                           |
| District             | Alameda County Flood Control and Water Conservation District                                                                                                                                     |
| Federal              | Refers to United States Federal Government, its departments and/or agencies                                                                                                                      |
| F.O.B                | Shall mean without charge for delivery to destination and placing on board a carrier at a specified point (Free On Board)                                                                        |
| IRS                  | Refers to Internal Revenue Service                                                                                                                                                               |
| Labor Code           | Refers to California Labor Code                                                                                                                                                                  |
| MSDS                 | Refers to Material Safety Data Sheets                                                                                                                                                            |
| OSHA                 | Refers to California Occupational Safety and Health Administrations                                                                                                                              |
| Proposal             | Shall mean proposer/contractor response to this RFP                                                                                                                                              |
| Proposer             | Shall mean specific person or firm responding to this RFP                                                                                                                                        |
| PO                   | Shall refer to Purchase Order(s)                                                                                                                                                                 |
| PWA                  | Public Works Agency – County of Alameda                                                                                                                                                          |
| Qualifications       | Shall mean Proposer's response to this RFP                                                                                                                                                       |
| Request for Proposal | Shall mean this document, which is the County of Alameda's request for contractors'/proposers' proposal to provide the goods and/or services being solicited herein. Also referred herein as RFP |
| Response             | Shall refer to proposer's proposal or quotation submitted in reply to RFP                                                                                                                        |
| RFP                  | Request for Proposal                                                                                                                                                                             |
| RFQ                  | Request for Qualifications                                                                                                                                                                       |
| SF                   | Standard Form                                                                                                                                                                                    |
| SLEB                 | Small Local Emerging Business                                                                                                                                                                    |
| SOQ                  | Statement of Qualifications                                                                                                                                                                      |
| State                | Refers to State of California, its departments and/or agencies                                                                                                                                   |
| TSD                  | Technical Services Department                                                                                                                                                                    |

**II. STATEMENT OF WORK**

**A. PROJECT DESCRIPTION AND OVERVIEW:**

The Alameda County Flood Control and Water Conservation District (District) is seeking proposals from firms (Proposer) that are interested in providing on-call construction management (resident engineering, inspection and materials testing) services for District projects. District projects include but are not limited to District flood control

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improvement projects. The District intends to enter into a contract with two (2) Consultants for a maximum period of three (3) years for each contract.

This Request for Proposal (RFP) describes the anticipated scope of services, the required Proposer expertise and experience, and the information that must be included in the proposal. Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification.

The District will evaluate and rank written proposals on the basis of thoroughness, completeness and content, as described in section III.G of this RFP: “Form of the Proposal.” The District will invite the top six ranked proposals for oral interviews. Final ranking will be based on oral interviews.

**Minimum Qualifications:** Proposer shall possess all professional licenses, certifications and experience necessary to perform civil engineering construction management (resident engineering, inspection and materials testing) services for public agencies in California as specified under this RFP. Furthermore, the Proposer shall demonstrate the following:

- Successful completion of and/or on-going construction management contracts with public agencies within the last five (5) years. References (including agency names, project manager, phone number, email address, etc.) shall be provided.
- Successful completion of construction management for a minimum of six (6) capital improvement projects similar to those listed in Section II, with construction contract award values of \$750,000 or more. Identify the referenced minimum of six (6) projects including project names, contracting agencies, agencies’ project managers, phone numbers and emails. Successful completion is defined as the period between project award for construction and construction acceptance by the awarding agency.
- Proposer’s specialties related to construction management, inspection, materials testing, dispute resolution, etc.
- Proposer’s capability of providing sufficient level of staff for on-call construction management services.

Each Proposer shall submit resumes of Key Personnel and if applicable subconsultant. This information shall indicate sufficient evidence satisfactory to the District that the proposed Key Personnel/subconsultant have the qualifications and experience necessary to successfully complete the Scope of Services. For the purposes of this clause, “Key Personnel” is defined as those individuals who are essential to the successful completion and execution of this contract. Key Personnel must be available for the duration of the engagement and may not be substituted without prior written approval by the District. The District reserves the right to direct the removal of any individual, including Key Personnel, assigned to this contract.

### **BACKGROUND AND AGENCY PROJECTS**

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The Alameda County Public Works Agency (Agency) serves a dual role in the delivery of capital improvement projects (CIPs) for the County and the County's Flood Control District (District). The Construction Inspection Division manages the implementation of these CIPs during construction from project advertisement through construction project acceptance by the County Engineer. The Agency is seeking two Consultants to augment the staff for the Construction Inspection Division in providing construction management (resident engineering, inspection and materials testing) services for the District's flood control capital improvement projects.

Capital improvement projects that are anticipated but not limited to during the contract period include the following categories.

- Site grading and low impact development improvements
- Floodwall improvements
- Levee improvements
- Creek restorations
- Channel desilting
- Culvert crossing improvements (including boring and jacking) under roadways, freeways and rail tracks
- Various flood control facilities/structures rehabilitations

### B. SCOPE OF SERVICES

In accordance with the circumstances described above, the District seeks a firm or firms to provide the following generally described phases of service:

#### **Contract Project Manager**

The Proposer shall identify a Contract Project Manager to oversee all work for the Proposer and who will act as the District's contact for all communications related to the assigned tasks and be responsible for all management, administration, technical oversight of the tasks and supervision of the Proposer's employees assigned to District work. The Contract Project Manager must provide the District with monthly progress reports describing the status of the task along with any outstanding or unresolved issues. The Contract Project Manager shall, at monthly intervals, provide the District with an accounting of all accrued charges for the Proposer.

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**Construction Management Services (resident engineering, inspection and materials testing) for Individual Projects**

The scope of the Proposer's services for each project assignment may include, but will not necessarily be limited to the following tasks. The District may request the Proposer to:

**Preconstruction Phase:**

- Assist the District in reviewing bids as requested.
- Confer with the District to determine inspection standards that will be applied during construction.
- Review contract plans and specifications for constructability, and make recommendations for necessary or desirable changes.
- Participate in pre-construction meetings, take and distribute accurate and complete minutes.

**Construction Phase:**

- Review the contractor's schedule for conformance to the specifications, logic, tasks definition and duration, critical activities, float, submittal review, material procurement, and coordination with other contracts. Review monthly updates including schedule, variance reports, cash flow reports, and material status reports. Attend meetings with the contractor to resolve disputes. Identify the potential for future conflicts, or change orders or claims.
- Review the contractor's procurement schedule and prepare written responses.
- Review, analyze, and respond to all requests for information, change order, and/or extensions of contract time.
- Submit recommendations on construction issues which include considerations of time and budget impacts, possible compensable delays, and possible mitigations.
- Review the contractor's staffing and equipment, and submit written report and recommendations.
- Maintain a daily log of all construction activities, contractors, subcontractors, including visits, meetings, progress, manpower, equipment, weather, delays, and material deliveries.
- Conduct regular meetings with the contractor. Prepare and distribute meeting minutes.
- Coordinate with all necessary regulatory agencies and municipalities involved with the project.
- Maintain a claim file for any issue that may result in a claim for additional time or costs. The Consultant shall immediately notify the District of all such claims or potential claims. The claim file shall include all correspondence and meeting minutes, and shall include "what if" scenarios, schedule analysis, and recommendations for resolution.
- Maintain a photographic and high definition video record of the site and construction progress.

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- Provide estimating services for verifying contractor's requests for extra work, change orders and claims.
- Maintain an independent schedule in order to verify the feasibility of the contractor's schedule.
- Assist the District in resolution of construction conflicts arising from design conflicts, clarifications, or issues, contract coordination, site changes, etc.
- Document and resolve unanticipated field conditions, disputes, and claims.
- Assist the District in analyzing value-engineering proposals submitted during construction.
- Prepare change orders and all associated supporting documentation, including analysis of schedule and budget impacts, and submit with recommendations to the District.
- Assist the District in processing submittals, test reports, RFIs and other documents for transmittal to the contractor, and maintain records for construction contract.
- Prepare and maintain a master log of contractor's submittals, RFIs and change order requests.
- Monitor and verify the contractor's preparation of record drawings.
- Assist the District to review and process contractor's monthly progress payments.
- Conduct final inspections and reports on the results. Make recommendations for resolution of disputed items.
- Assist the District in the preparation of the final punchlist.
- Review and process Project Close-out documents.
- Perform project close-out including completion and signoff of record drawings.
- Comply with documentation format as required by the District.
- Provide document control services for any revisions to drawings and specifications.
- Provide inspection services necessary to monitor and inspect the methods, workmanship, and materials used by the contractor to assure compliance with the District's contract documents and all applicable codes, building permit conditions. The District reserves the right to perform some or all of the inspection.
- Perform materials testing services, including herein as part of Attachment A (a list of the type of tests that the District is mostly likely to perform). Proposer may submit Proposals even if they cannot perform all tests listed, though ability to perform the tests will be included in the District's evaluation of the Proposer.
- Provide all necessary testing equipment, tools, materials, safety equipment, and cell phones needed for each of the personnel assigned to perform the assigned tests and inspections.

### C. TIME OF SERVICES/PROJECT SCHEDULE

This is an on-call and as-needed professional services contract for a period of up to three (3) years. There is no guarantee on the amount of work that the District will seek during the contract period.

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D. OTHER COUNTY REQUIREMENTS

1. Local Participation: Note that it is a requirement for award that all contracts such as this one include local (defined as Alameda County based) businesses to the maximum extent possible consistent with the nature of the services to be provided. The County Small Local and Emerging Business (SLEB) Program requires that to be awarded this contract the lead firm must be a SLEB or, if the lead firm is not a SLEB, the lead firm must partner with SLEBs to the maximum extent reasonable and possible, with a minimum of 20% SLEB participation required. Please note detailed provisions in COUNTY PROVISIONS SECTION of this RFP/SOQ.

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**III. INSTRUCTIONS TO PROPOSERS**

**A. DISTRICT CONTACTS**

The Public Works Agency is managing the RFP/SOQ process for this project on behalf of the District. All contact during the competitive process is to be through PWA only.

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

All questions regarding these specifications, terms and conditions are to be submitted in writing, preferably via e-mail by Friday November 14, 2014 to:

Stanley Fung, P.E.  
Alameda County Public Works Agency  
951 Turner Court, Room 300  
Hayward, CA 94545  
E-Mail: Stanley@acpwa.org  
FAX: 510-732-6173

The Alameda County Public Works Agency Doing Business With Us website will be the official notification posting place of all Request for Proposals and Addenda. Go to <http://acgov.org/pwa/business/services.htm> to view current contracting opportunities.

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B. CALENDAR OF EVENTS

| Event                                                                                                           | Date/Location                                                                                                                              |                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RFP/SOQ Issued                                                                                                  | October 21, 2014                                                                                                                           |                                                                                                                                                                                                                                               |
| Written Questions Due                                                                                           | <b><u>BY</u></b> 2:00 PM on November 14, 2014                                                                                              |                                                                                                                                                                                                                                               |
| Networking/RFP Conference<br><b>(First Bid Conference must be at least 10 business days after bid issuance)</b> | TUESDAY,<br>NOVEMBER 4, 2014<br>2:00 PM<br><b><u>LOCATION:</u></b><br>PWA<br>Conf. Rm. 300<br>951 Turner Court, Room 300<br>Hayward, CA    | Additional Information:<br><br><i>Please allow enough time for parking at metered street parking or public parking lot and entry into secure building.</i>                                                                                    |
| Second Networking/Proposers Conference                                                                          | WEDNESDAY,<br>NOVEMBER 12, 2014<br>2:00 PM<br><b><u>LOCATION:</u></b><br>PWA<br>Conf. Rm. 300<br>951 Turner Court, Room 300<br>Hayward, CA | Additional Information:<br><br><i>Please allow enough time for parking at metered street parking or public parking lot and entry into secure building; Paid parking is available at the adjacent County on-site parking lot &amp; garage.</i> |
| Addendum Issued                                                                                                 | November 21, 2014                                                                                                                          |                                                                                                                                                                                                                                               |
| Response Due<br><b>(At least 10 business days after last addendum issued)</b>                                   | <b>DECEMBER 9, 2014</b> <b><u>NO LATER THAN</u></b> 2:00 p.m.                                                                              |                                                                                                                                                                                                                                               |
| Evaluation Period                                                                                               | December 15, 2014 – January 5, 2015                                                                                                        |                                                                                                                                                                                                                                               |
| Oral Presentation/<br>Interviews                                                                                | Week of January 12, 2015                                                                                                                   |                                                                                                                                                                                                                                               |
| Intent to Award Letter Issued                                                                                   | Week of January 19, 2015                                                                                                                   |                                                                                                                                                                                                                                               |
| Board Award Date                                                                                                | February 24, 2015                                                                                                                          |                                                                                                                                                                                                                                               |
| Contract Start Date                                                                                             | Spring 2015                                                                                                                                |                                                                                                                                                                                                                                               |

**Note:** Award and start dates are approximate.

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

C. NETWORKING/PROPOSERS CONFERENCE

NOTE: Firms wishing to participate must attend ONE Conference.  
Two (2) networking/Proposers conference(s) will be held to:

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

Written questions submitted prior to the networking/proposers conference(s), in accordance with the Calendar of Events, and verbal questions received at the networking/proposers conference(s), will be addressed whenever possible at the networking/proposers conference(s). All questions will be addressed and the list of attendees will be included in an RFP Addendum following the networking/RFP conference(s) in accordance with the Calendar of Events.

**Attendance at one of the two Networking/Proposers Conferences is mandatory. Failure to participate in either one of the Networking/Proposers Conferences will be ground for disqualification of the proposal submitted by the Proposer.**

Networking/Proposers conference(s) will be held as shown on Calendar of Events section above.

D. SUBMITTAL OF PROPOSALS

1. All proposals must be SEALED and must be received at the Public Works Agency, 951 Turner Court Room 300, Hayward, CA **BEFORE** 2:00 p.m. on the due date specified in the Calendar of Events.

**NOTE: LATE AND/OR UNSEALED PROPOSALS CANNOT BE ACCEPTED. IF HAND DELIVERING PROPOSALS PLEASE ALLOW TIME FOR METERED STREET PARKING OR PARKING IN AREA PUBLIC PARKING LOTS AND ENTRY INTO SECURE BUILDING.**

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

All proposals, whether delivered by an employee of Proposer, U.S. Postal Service, courier or package delivery service, must be received at the stated address prior to the time designated. The time clock on the front counter inside Room 300 of the Public Works Agency Construction Inspection office located at 951 Turner Court in Hayward, CA shall be considered the official timepiece for the purpose of establishing the actual receipt of proposals.

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

**CONSTRUCTION INSPECTION DIVISION**

Alameda County, PWA  
Attn: Stanley Fung, P.E., T.E.  
Principal Civil Engineer  
951 Turner Court, Room 300  
Hayward, CA 94545

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

E. **RESPONSE FORMAT**

1. Proposal responses are to be straightforward, clear, concise and specific to the information requested. Submit in 8-1/2 x 11 format one (1) original plus four (4) copies of the proposal, plus a copy shall be submitted on read-only CD in "PDF" format. Original proposal is to be clearly marked, printed on plain white paper, and must be either loose leaf or in a 3-ring binder (NOT bound). It is preferred that all proposals submitted shall be printed double-sided and on minimum 30% post-consumer recycled content paper. Inability to comply with this recommendation will have no impact on the evaluation and scoring of the proposal. Submittals shall contain only material directly related to response to requirements, not general marketing material. Organize your information under tabs in the same order delineated below under "Response Content."

F. **RESPONSE CONTENT/SUBMITTALS**

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1. Proposal responses must be signed in ink. The signatures of all persons required under the applicable organizational documents in order to bind the Proposer must be on the proposal response. Provide applicable signature documentation pursuant to Contractor's organizational structure verifying the authority of the person signing the proposal response to commit to its Proposal on behalf of the Contractor.
2. Proposal response shall include the following information:
  - a. Organization and Approach
    1. Describe the roles and organization of your proposed team for this on-call services contract. Indicate the composition and number of project staff, facilities available and experience of your firm/team as it relates to this contract.
    2. Describe your project and management approach. Provide a detailed description of how the team, including all sub-consultants, will be managed and the scope of work provided by each firm to respond to the on-call services contract.
    3. Describe the roles of key individuals on the team, including roles of individuals in each sub-consultant firm. Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Project's Scope of Work, as well as the length of employment with the proposing firm. Key members, especially the Project Manager, shall have significant demonstrated experience with this type of service, and should be committed to stay with the project for the duration of the contract.
    4. Describe project team's relevant work experience with local public agencies in the area of construction management.
  - b. Litigation:

Indicate if your firm was involved with any litigation in connection with your prior projects. If yes, briefly describe the nature of the litigation and the result.
  - c. Hourly Rate Schedule
    1. Provide hourly rate fee schedules for your office and each key subconsultant indicating the job classifications for the proposed staff for the intended contract in a separate sealed envelope.

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d. References

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

e. SLEB Participation: - The Agency supports Alameda County's efforts to contract with small local emerging businesses (SLEBs). The County's requirement is to have at least 20 percent of the contract work be performed by Alameda County SLEB certified firm(s). Indicate whether proposing firm(s) and other firms serving as sub-consultants are certified as Alameda County SLEBs. Indicate the percentage and scope of work to be performed by SLEBs. Indicate if Proposer has an office located in Alameda County.

For more information regarding the SLEB program, go to:  
<http://www.acgov.org/auditor/sleb>

3. Exhibits/Attachments

Proposers shall include in their submittal completed and signed documentation for all listed Exhibits, including any attachments required by the Exhibit. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in the District's sole discretion. The content and sequence for each required document shall be as follows:

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

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- Exhibit K – (Not Used)
- Exhibit L – Debarment and Suspension Certification
- Exhibit M– The Iran Contracting Act (ICA) of 2010
- Attachment A – List of tests performed in Materials Testing Services

G. EVALUATION CRITERIA/SELECTION COMMITTEE

All proposals will be evaluated by a District Selection Committee (DSC). The District Selection Committee may be composed of District staff and other parties that have expertise or experience in the professional services described herein. The DSC will review the submittals and will rank the proposers. The six (6) highest ranked proposers will be invited for an interview in accordance with the evaluation criteria set forth in this RFP/SOQ. The evaluation of the proposals shall be within the sole judgment and discretion of the DSC.

All contacts during the evaluation phase shall be through the Public Works Agency contact only. Proposers shall neither contact nor lobby evaluators during the evaluation process. Attempts by Proposer to contact and/or influence members of the DSC may result in disqualification of Proposer.

The DSC will evaluate each proposal meeting the qualification requirements set forth in this RFP/SOQ. Proposers should bear in mind that any proposal that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the District's requirements as set forth in this RFP/SOQ.

As a result of this RFP/SOQ, District intends to interview the six (6) highest ranked proposers. However, District reserves the right to determine the number of interviews it will conduct for this project. Following the interviews, District will request the highest two (2) ranked proposers to submit a fee proposal. Upon acceptance of a fee proposal and successful contract negotiations District will recommend a contract be awarded. Should an agreement not be reached on a fair and reasonable fee with the highest ranked firm, the next highest ranked firm will be requested to submit a fee proposal.

Each of the Evaluation Criteria below will be used in ranking and determining the quality of bidders' proposals. Proposals will be evaluated according to the Evaluation Criteria, and scored on the zero to five-point scale outlined below. The scores for all Evaluation Criteria will then be added, according to their assigned weight (below), to arrive at a weighted score for each proposal. A proposal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any project is five hundred fifty (550) points, including the possible fifty (50) points for local and small, local and emerging, or local preference points (maximum 10% of final score).

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The following Evaluation Criteria below will be used in ranking and determining the quality of Proposer's proposals. Proposals will be evaluated according to the Evaluation Criteria, and rated on a zero to five-point scale:

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

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The Evaluation Criteria and their respective weights are as follows:

|                   | Evaluation Criteria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | (Wt.)/Score           |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| F.1.              | <p><u>Completeness of Response</u></p> <p>Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent Addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration.</p> <p>To be considered complete, Proposers must have attended one of the two Networking/Proposers Conferences, and include the complete and accurate documentation identified herein that they are certified small and local or emerging and local business or are partnering, joint venturing or subcontracting with small and local or emerging and local business(es) that are certified at the time of response submittal.</p> <p>Responses that are rated a Fail and are not considered may be picked up at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.</p> | Pass/Fail             |
| F.2.a.<br>F.2.a.1 | <p><u>Organization &amp; Approach</u></p> <p><u>Roles and Organization of Proposed Team</u></p> <ul style="list-style-type: none"> <li>▪ Proposes adequate and appropriate disciplines of project team.</li> <li>▪ Some or all of team members (firms) have previously worked together on similar project(s).</li> <li>▪ Overall organization of the team is relevant to District needs.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | (10%)<br>50 pts max.  |
| F.2.a.2           | <p><u>Project and Management Approach</u></p> <ul style="list-style-type: none"> <li>▪ Team is managed by an individual with appropriate experience in similar projects. This person's time is appropriately committed to the project.</li> <li>▪ Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | (25%)<br>125 pts max. |
| F.2.a.3           | <p><u>Roles of Key Individuals on the Team</u></p> <ul style="list-style-type: none"> <li>▪ Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.</li> <li>▪ Key positions required to execute the project team's responsibilities are appropriately staffed.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                       |
| F.2.a.4           | <p><u>Working Relationship with District</u></p> <ul style="list-style-type: none"> <li>▪ Team and its leaders have experience working in the public sector and knowledge of public sector procurement process.</li> <li>▪ Team leadership understands the nature of public sector work and its decision-making process.</li> <li>▪ Proposal responds to need to assist District during the project.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                       |
| F.2.b.            | <p><u>Litigation History</u></p> <ul style="list-style-type: none"> <li>▪ Litigation history, if any, is described.</li> <li>▪ If judgment(s) against Proposer, appropriate explanation provided.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | (5%)<br>25 pts max.   |
| F.2.d.            | <p><u>References</u></p> <ul style="list-style-type: none"> <li>▪ Reference(s) for the lead firm on similar projects are provided.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | (10%)<br>50 pts max.  |

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|                                                 | Evaluation Criteria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | (Wt.)/Score           |
|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| (A)                                             | <b>Subtotal Points from Above</b><br><b>(The highest 6 Proposers will be invited to interview with District)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 250 pts max.          |
| (B)                                             | <u>Oral Presentation and Interview</u><br>Following evaluation of the written proposals, Proposers receiving the six (6) highest scores will be invited to an oral presentation and interview. The scores at that time will not be communicated to Proposers. The oral presentation and question/answers by each Proposer shall not exceed sixty (60) minutes in length. The oral interview will consist of a Proposer's presentation, followed by standard questions asked of each of the Proposers and specific questions regarding the specific proposal. The proposals may then be re-evaluated and re-scored based on the oral presentation and interview. | (50%)<br>250 pts max. |
| <b>SMALL LOCAL EMERGING BUSINESS PREFERENCE</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                       |
| (C)<br>F.2.e.                                   | <b>Local Preference:</b> Points equaling five percent (5%) of bidder's total score, for the above Evaluation Criteria, will be added. This will be the bidder's final score for purposes of award evaluation.                                                                                                                                                                                                                                                                                                                                                                                                                                                   | (5%)<br>25 pts max.   |
| (D)<br>F.2.e.                                   | <b>Certified Small and Local or Emerging and Local Preference:</b> Points equaling five percent (5%) of bidders total score, for the above Evaluation Criteria, will be added. This will be the bidder's final score for purposes of award evaluation.                                                                                                                                                                                                                                                                                                                                                                                                          | (5%)<br>25 pts max    |
|                                                 | <b>Total Points (A) + (B) + (C) + (D)</b><br><b>Final ranking of the highest six (6) Proposers will be based on the Total Points scored on this rating sheet.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 550 pts. max          |

H. NOTICE OF AWARD

- At the conclusion of the RFP/SOQ response evaluation process, including successful completion of negotiations with the top-ranked firms ("Evaluation Process"), all Proposers will be notified in writing of the contract award recommendation. The document providing this notification is the Notice of Award.

The Notice of Award will provide the following information:

- The name of the proposer being recommended for contract award;
  - The names of all other proposers; and,
  - In summary form, evaluation points for each proposer.
- Debriefings for unsuccessful proposers may be scheduled and provided upon written request and will be restricted to discussion of the unsuccessful offeror's proposal with the Project Manager.

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- a. Under no circumstances will any discussion be conducted with regard to contract negotiations with the successful proposer, etc.
  - b. Debriefing may include review of successful proposer's proposal.
3. The submitted proposals shall be made available upon request no later than five (5) business days before approval of the award and contract is scheduled to be heard by the Board of Supervisors.

I. PROPOSAL PROTEST/APPEALS PROCESS

District prides itself on the establishment of fair and competitive contracting procedures and the commitment made to follow those procedures. The following is provided in the event that bidders wish to protest the bid process or appeal the recommendation to award a contract for this project once the Notices of Award have been issued. Bid protests submitted prior to issuance of the Notices of Award will not be accepted by the District.

1. Any Proposal protest by any Bidder regarding any other Proposal must be submitted in writing to the District's Public Works Agency Director, located at 399 Elmhurst Street, Hayward, CA 94544, FAX: (510) 670-5541, before 5:00 p.m. of the FIFTH (5th) business day following the date of issuance of the Notice of Intent to Award, not the date received by the Proposer. A Proposal protest received after 5:00 p.m. is considered received as of the next business day.
  - a. The Proposal protest must contain a complete statement of the reasons and facts for the protest.
  - b. The protest must refer to the specific portions of all documents that form the basis for the protest.
  - c. The protest must include the name, address, email address, fax number and telephone number of the person representing the protesting party.
  - d. The District will transmit a copy of the bid protest to all bidders as soon as possible after receipt of the protest.
2. Upon receipt of written protest, Public Works Agency Director, or designee will review and evaluate the protest and issue a written decision. The Public Works Agency Director, may, at his or her discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or schedule a meeting(s) with the protesting Proposer and others (as appropriate) to discuss the protest. The decision on the bid protest will be issued at least ten (10) business days prior to the Board hearing date.

The decision will be communicated by e-mail or fax, and certified mail,

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and will inform the proposer whether or not the recommendation to the Board of Supervisors in the Notice of Intent to Award is going to change. A copy of the decision will be furnished to all Proposers affected by the decision. As used in this paragraph, a Proposer is affected by the decision on a Proposal protest if a decision on the protest could have resulted in the Proposer not being the apparent successful Proposer on the RFP.

3. The decision of the Public Works Agency Director on the Proposal protest may be appealed to the Auditor-Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Room 249, Oakland, CA 94612, Fax: (510) 272-6502. The Proposer whose Proposal is the subject of the protest, all Proposers affected by the Public Works Agency Director's decision on the protest, and the protestor have the right to appeal if not satisfied with the Public Works Agency Director's decision. All appeals to the Auditor-Controller's OCC shall be in writing and submitted within five (5) business days following the issuance of the decision by the Public Works Agency Director, not the date received by the Proposer. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the FIFTH (5th) business day following the date of issuance of the decision by the Public Works Agency Director shall not be considered under any circumstances by the Public Works Agency or the Auditor-Controller OCC.
  - a. The appeal shall specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal.
  - b. In reviewing protest appeals, the OCC will not re-judge the proposal(s). The appeal to the OCC shall be limited to review of the procurement process to determine if the contracting department materially erred in following the RFP/RFQ or, where appropriate, County contracting policies or other laws and regulations.
  - c. The appeal to the OCC also shall be limited to the grounds raised in the original protest and the decision by the Public Works Agency Director. As such, a Proposer is prohibited from stating new grounds for a Proposal protest in its appeal. The Auditor-Controller (OCC) shall only review the materials and conclusions reached by the Public Works Agency Director or department designee, and will determine whether to uphold or overturn the protest decision.
  - d. The Auditor's Office may overturn the results of a Proposal process for ethical violations by PWA staff, District Selection Committee members, subject matter experts, or any other District staff managing or participating in the competitive process, regardless of timing or the contents of a proposal protest.
  - e. The decision of the Auditor-Controller's OCC is the final step of the appeal process. A copy of the decision of the Auditor-

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Controller's OCC will be furnished to the protestor, the Proposer whose Proposal is the subject of the Proposal protest, and all Proposers affected by the decision.

4. The District will complete the Proposal protest/appeal procedures set forth in this paragraph before a recommendation to award the Contract is considered by the Board of Supervisors.
5. The procedures and time limits set forth in this paragraph are mandatory and are each Proposer's sole and exclusive remedy in the event of Proposal Protest. A Proposer's failure to timely complete both the Proposal protest and appeal procedures shall be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, shall constitute a waiver of any right to further pursue the Proposal protest, including filing a Government Code Claim or legal proceedings.

**IV. TERMS AND CONDITIONS**

**A. AWARD**

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

**B. METHOD OF CONTRACTING**

1. A signed Agreement will be issued upon Board approval.

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2. Agreement will be faxed, transmitted electronically or mailed and shall be the only authorization for the Contractor to begin work
3. Payments will be issued only in the name of Contractor.
4. Change orders shall be agreed upon by Contractor and District and issued as needed in writing by District.

**C. COUNTY PROVISIONS**

The District supports and participates in the County's procurement policies, as follows. Proposers and firms awarded contracts resulting from this RFP process shall adhere to the County's procurement policies to the same degree and in the same manner as if the proposers and firms awarded contracts were participating in a procurement process and entering into contracts with the County.

1. Small and Emerging Locally Owned Business: The County is vitally interested in promoting the growth of small and emerging local businesses by means of increasing the participation of these businesses in the County's purchase of goods and services. As a result of the County's commitment to advance the economic opportunities of these businesses, **Proposers must meet the County's Small and Emerging Locally Owned Business requirements in order to be considered for the contract award.** These requirements can be found online at: <http://acgov.org/auditor/sleb/overview.htm> For purposes of this proposal, applicable industries include, but are not limited to, the following NAICS Code(s): <insert NAICS code>.

A small business is defined by the United States Small Business Administration (SBA) as having no more than the number of employees or average annual gross receipts over the last three (3) years required per SBA standards based on the small business's appropriate NAICS code.

An emerging business, as defined by the County, is one that has less than one-half (1/2) of the preceding amount and has been in business less than five (5) years.

2. Compliance with the SLEB program is required for goods, services and professional services contracts, including but not limited to architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services projects.
3. Alameda County utilizes the Elation Systems contract compliance application as part of its commitment to assist contractors to conveniently comply with legal and contractual requirements. Elation Systems, a secure web-based system, was implemented to monitor compliance and to track and report SLEB participation in County contracts.

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

Upon contract award

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

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize Elation Systems.

For further information, please see the Elation Systems training schedule online at [http://www.elationsys.com/elationsys/support\\_1.htm](http://www.elationsys.com/elationsys/support_1.htm) or call Elation Systems at (925) 924-0340.

If you have any other questions regarding the utilization of Elation Systems please contact the Auditor-Controller's Office of Contract Compliance (OCC) located at 1221 Oak Street, Room 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

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

4. First Source Program: The County is vitally interested in supporting our Alameda County employed and underemployed residents. Contractors awarded contracts for goods and services for \$100,000 or more as a result of this RFP/SOQ are required to agree to this program. For more details: <http://acgov.org/auditor/sleb/sourceprogram.htm>

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**D. DEBARMENT/SUSPENSION POLICY:**

In order to prohibit the procurement of any goods or services ultimately funded by Federal awards from debarred, suspended or otherwise excluded parties, each bidder will be screened at the time of Bid response

<http://www.acgov.org/gsa/departments/purchasing/policy/debar.htm>

## EXHIBIT A – SOQ ACKNOWLEDGEMENT

### ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT REQUEST FOR PROPOSAL For –CONSTRUCTION MANAGEMENT SERVICES

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

- 1. Preparation of proposals:** (a) All proposal responses must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing proposal. No alterations or changes of any kind shall be permitted to Exhibits attached herein unless indicated otherwise in writing. Responses that do not comply shall be subject to rejection in total.
- 2. Failure to submit proposal:** If you are not submitting a proposal but want to remain on the mailing list and receive future proposals, complete, sign and return this Proposal Acknowledgement and state the reason you are not proposing.
- 3. Award:** (a) Unless otherwise specified by the proposer or the RFP gives notice of an all-or-none award, the District may accept any item or group of items of any proposal. (b) Proposals are subject to acceptance at any time within thirty (30) days of opening, unless otherwise specified in the RFP/SOQ. (c) A valid, written purchase order mailed, or otherwise furnished, to the successful proposer within the time for acceptance specified results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
- 4. Patent indemnity:** Vendors who do business with the District shall hold the Alameda County Flood Control & Water Conservation District, the County of Alameda, and their officers, agents and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
- 5. California Government Code Section 4552:** In submitting a proposal to a public purchasing body, the proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the proposer for sale to the purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the proposer.
- 6. No guarantee or warranty:** The Alameda County Flood Control & Water Conservation District makes no guarantee or warranty as to the condition, completeness or safety of any material or equipment that may be traded in on this order.

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

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

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

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

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

## EXHIBIT C

### CONTRACTORS INSURANCE REQUIREMENTS SYSTEM

The Risk Management Unit has developed a new basic insurance requirement system to assist its clients in determining the appropriate insurance to require from County Contractors. This new system can be applied to your operations effective immediately. You may access the County of Alameda Minimum Insurance Requirement forms [here](#) (or visit: [http://dsmain/docushare/dscgi/ds.py/Get/File-5784/COI\\_Reqmt\\_DB.xls](http://dsmain/docushare/dscgi/ds.py/Get/File-5784/COI_Reqmt_DB.xls)). You will find Risk Management's instructions, insurance requirements, and certificate numbers. The path to this may be found on the County intranet site: Alcoweb / Document Center / Risk Management / Contractors Insurance Requirements / COI Requirements Database.



## COUNTY OF ALAMEDA SMALL, LOCAL AND EMERGING BUSINESS PROGRAM SLEB CERTIFICATION INSTRUCTIONS

---

### 1. Complete the application form

*3 Easy Steps*

#### Program Definitions

**Local Business:** A business having a fixed office with a street address in Alameda County for a minimum period of 6 months and a valid business license issued by the County or a City within Alameda County

**Small Business:** A business which has been certified by the County as local and meets the U.S. Business Administration (SBA) size standards for its classification. Size standards and classification codes information available at <http://www.naics.com/search.htm>

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

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

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

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

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

### 3. On-site Visit

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

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

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

If you have questions regarding your certification, please contact:

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

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

# East Bay Interagency Alliance (EBIA)

## COMMON APPLICATION for LOCAL CERTIFICATION

Alameda County – Alameda County Transportation Commission – City of Oakland – Port of Oakland

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

Check Certifying Agency and click link to download Supplemental:

- ☐ Alameda County – No supplemental required
- ☐ Alameda County Transportation Commission – Complete [Supplemental B](#)
- ☐ City of Oakland – Complete [Supplemental C](#)
- ☐ Port of Oakland – Complete [Supplemental D](#)
- ☐ All the above

**The Common Application is a sharing of information between agencies and NOT a reciprocal certification.**

### 1) Contact Information

|                                        |              |                               |              |
|----------------------------------------|--------------|-------------------------------|--------------|
| Legal Name of Entity                   |              | Contact Person (Name & Title) |              |
| Street Address of Entity (No P.O. Box) |              |                               |              |
| City                                   |              | State                         | Zip Code     |
|                                        |              |                               | County       |
| Telephone<br>( )                       | Fax #<br>( ) |                               | Cell#<br>( ) |
| Email Address                          |              | Web Site                      |              |

### 2) Company Profile

|                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Primary Service undertaken/offered:                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                              | Specialty Service undertaken/offered:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                         |
| Date Entity was established (mm/dd/yr)                                                                                                                                                                                                                                                                                                                                                                                                                 | Does the entity have one or more additional offices outside the city of Oakland, CA? <input type="checkbox"/> Y <input type="checkbox"/> N<br>If yes, list other location(s) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Date Oakland office was established (mm/dd/yr)                                          |
| Method of Acquisition                                                                                                                                                                                                                                                                                                                                                                                                                                  | <input type="checkbox"/> New<br><input type="checkbox"/> Merger or consolidation                                                                                             | <input type="checkbox"/> Purchased existing<br><input type="checkbox"/> Inherited                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <input type="checkbox"/> Secured concession<br><input type="checkbox"/> Other (explain) |
| Federal ID Number:                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                         |
| Has this entity operated under a different name during the past five years? <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                         |
| Type of Firm<br><input type="checkbox"/> Sole Proprietorship<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Partnership<br><input type="checkbox"/> Corporation<br><input type="checkbox"/> Limited Liability Partnership<br><input type="checkbox"/> Limited Liability Corporation<br><input type="checkbox"/> Publicly traded entity<br><input type="checkbox"/> Non-Profit or Church<br><input type="checkbox"/> Other _____ |                                                                                                                                                                              | Ethnicity Group of owners(s) that own greater than 50% of the business. (for tracking purposes only)<br><input type="checkbox"/> African American<br><input type="checkbox"/> Asian<br><input type="checkbox"/> Asian Pacific /Hawaiian<br><input type="checkbox"/> Asian Indian<br><input type="checkbox"/> Caucasian<br><input type="checkbox"/> Filipino<br><input type="checkbox"/> Hispanic<br><input type="checkbox"/> Native American<br><input type="checkbox"/> Multi ethnic ownership<br><input type="checkbox"/> Multi ethnic minority ownership<br><input type="checkbox"/> Other _____ |                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                              | Gender (for tracking purposes only)<br><input type="checkbox"/> Male <input type="checkbox"/> Female                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                         |
| Gross Receipts for the last three recent fiscal years:<br>Please attach copies of appropriate tax returns: (e.g. Form 990, Form 1040, Form 1120, etc)                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                              | Year Ended _____<br>Year Ended _____<br>Year Ended _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Total Receipts \$ _____<br>Total Receipts \$ _____<br>Total Receipts \$ _____           |

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

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

|                                                                                                     |                                                      |                                                    |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------------|----------------------------------------------------|
| Number of Employees at the local office<br>Permanent Full time ____<br><br>Permanent Part time ____ | Temporary Full Time ____<br>Temporary Part Time ____ | Seasonal Full Time ____<br>Seasonal Part Time ____ |
| TOTAL Number of Employees at all locations.<br>Permanent Full time ____<br>Permanent Part time ____ | Temporary Full Time ____<br>Temporary Part Time ____ | Seasonal Full Time ____<br>Seasonal Part Time ____ |

**3) Certifications:**

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

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

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

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

| NAICS Code | Description of Work |
|------------|---------------------|
|            |                     |
|            |                     |
|            |                     |
|            |                     |
|            |                     |

**6) Additional Information:**

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

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

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

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

# EXHIBIT F

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

### *Request for Proposal and Statement of Qualifications – Construction Management Services*

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

Bidders not meeting the [definition of a SLEB \(http://acgov.org/auditor/sleb/overview.htm\)](http://acgov.org/auditor/sleb/overview.htm) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated bid amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that bidders will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Bidders are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually bid as a prime on their own.

Once a contract has been awarded, bidders will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

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

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

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

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

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

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

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

SLEB Certification Status: ☐ Small / ☐ Emerging

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

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

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

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

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

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

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

**EXHIBIT G**  
**COUNTY OF ALAMEDA**

***Request for Proposal and Statement of Qualifications***  
**for**  
**Construction Management Services**

**REQUEST FOR BID PREFERENCE**

**PLEASE READ AND COMPLETE THIS FORM CAREFULLY:**

IF YOU ARE A PRIME BIDDER WHO IS A **LOCAL BUSINESS**, AND/OR A CERTIFIED **SMALL AND LOCAL BUSINESS** OR A CERTIFIED **EMERGING AND LOCAL BUSINESS**, COMPLETE THIS FORM AND RETURN IT WITH YOUR RFP/SOQ SUBMITTAL.

Subject to the requirements of the SLEB program and the criteria of each procurement process, the maximum bid evaluation preference points for being certified is 10% (5% local & 5% certified). Compliance with the SLEB program is required for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services projects.

Check the appropriate boxes below (2 maximum) and provide the requested information.

|                                                                                                                                                                                                                                                                                                                                                                                              |  |  |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|
| <input type="checkbox"/> <b>Request for 5% LOCAL Bid Preference</b><br>(Complete 1-4, print name, title, sign and date below)<br><b>Submit the following:</b>                                                                                                                                                                                                                                |  |  |  |
| <ul style="list-style-type: none"><li>• Copy of a verifiable business license, issued by the County of Alameda or a City within the County; and</li><li>• Proof of six (6) months business residency, identifying the name of the vendor and the local address. Utility bills, deed of trusts or lease agreements, etc., are acceptable verification documents to prove residency.</li></ul> |  |  |  |
| 1. Company Name                                                                                                                                                                                                                                                                                                                                                                              |  |  |  |
| 2. Street Address                                                                                                                                                                                                                                                                                                                                                                            |  |  |  |
| 3. Telephone Number                                                                                                                                                                                                                                                                                                                                                                          |  |  |  |
| 4. Business License #                                                                                                                                                                                                                                                                                                                                                                        |  |  |  |

  

|                                                                                                                                                                                                                                                              |  |                                    |          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------|----------|
| (Check One)<br><input type="checkbox"/> <b>Request for 5% SMALL Local Business Bid Preference</b><br><b><u>OR</u></b><br><input type="checkbox"/> <b>Request for 5% EMERGING Local Business Bid Preference</b><br>(Complete certification information below) |  |                                    |          |
| SLEB Certification #:                                                                                                                                                                                                                                        |  | SLEB Certification Expiration Date | /      / |
| NAICS Codes<br>Included in SLEB<br>Certification                                                                                                                                                                                                             |  |                                    |          |

**The Undersigned declares that the foregoing information is true and correct:**

Print/Type Name:

\_\_\_\_\_

Print/Type Title:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Date:

\_\_\_\_\_

**EXHIBIT H**  
**COUNTY OF ALAMEDA**

**Request for Proposal and Statement of Qualifications  
for  
Construction Management Services**

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

ALCOLINK Vendor Number (if known): 00000

SLEB Vendor Number: \_\_\_\_\_

Full Legal Name: \_\_\_\_\_

DBA \_\_\_\_\_

Type of Entity:    ☐ Individual       ☐ Sole Proprietor    ☐ Partnership  
                         ☐ Corporation   ☐ Tax-Exempted   ☐ Government or Trust

Check the boxes that apply:

☐ Goods Only    ☐ Goods & Services    ☐ Rents/Leases    ☐ Legal Services  
☐ Rents/Leases paid to you as the agent    ☐ Medical Services    ☐ Non-Medical Services – Describe \_\_\_\_\_  
☐ Other \_\_\_\_\_

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

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

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

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

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

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

LOC    ☐ Local Vendor (Holds business license within Alameda County)  
SML    ☐ Small Business (as defined by Small Business Administration)  
I    ☐ American Indian or Alaskan Native (>50%)  
A    ☐ Asian (>50%)  
B    ☐ Black or African American (>50%)  
F    ☐ Filipino (>50%)  
H    ☐ Hispanic or Latino (>50%)  
N    ☐ Native Hawaiian or other Pacific Islander (>50%)  
W    ☐ White (>50%)

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

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

This information to be completed by County:

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

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

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

## EXHIBIT H

# COUNTY OF ALAMEDA

*Request for Proposal and Statement of Qualifications  
for  
Construction Management Services*

## ALAMEDA COUNTY VENDOR FIRST SOURCE AGREEMENT VENDOR INFORMATION

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

**Alameda County** (through East Bay Works and Social Services Agency) agrees to only refer pre-screened qualified applicants, based on vendor specifications, to vendor for interviews for prospective employment by Vendor (see Incentives for Vendor Participation under Vendor/First Source Program located on the Small Local Emerging Business (SLEB) Website, <http://www.acgov.org/auditor/sleb/>).

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

---

(Company Name)

---

(Vendor Signature)

---

(Date)

---

(East Bay Works / One-Stop Representative Signature)

---

(Date)

Justification for Non-Compliance:

---

---

## EXHIBIT I

### *Request for Proposal and Statement of Qualifications for Construction Management Services*

**Bidder Name:** \_\_\_\_\_

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

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

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

\*Print additional pages as necessary

**EXHIBIT J**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT  
FOR  
ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION  
DISTRICT  
-CONSTRUCTION MANAGEMENT SERVICES**

**(FOLLOWS)**

**Professional Services Agreement**

**With**

[REDACTED]

**for the**

**CIVIL ENGINEERING SERVICES FOR**

[REDACTED]

**ALAMEDA COUNTY**

**Contract No. [REDACTED]**

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

**ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

---

**AGREEMENT BETWEEN THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AND**

This Agreement is made this Twenty Eighth day of [REDACTED], in the City of Oakland, State of California, by and between [REDACTED]

[REDACTED] hereinafter referred to as "Consultant" and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as "District."

**AGREEMENT****1. Definitions**

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

- Agreement** This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "C", "D", "E", "F" and "G" attached hereto.
- Consultant** [REDACTED]
- District** Alameda County Flood Control and Water Conservation District
- Project** The District's project – [REDACTED] - as further described in Appendix "A", Scope of Services.
- Services** All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

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

**2. Term of Agreement**

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from [REDACTED].

**3. Services Consultant Agrees to Perform**

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

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

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

#### **4. Compensation**

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

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

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

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

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

## **6. Qualified Personnel**

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

## **7. Representations**

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

## 8. Indemnification and General Liability

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

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

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

8.2 [Intentionally Omitted]

8.3 [Intentionally Omitted]

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

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

## 9. Liability of District

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

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

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

employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of District.

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

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

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

## **11. Insurance**

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

## **12. Suspension of Services**

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

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

- 13.1 If at any time District believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, District may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide

written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Consultant shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Consultant's right to proceed under the Agreement, for cause:

13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan acceptable to District to cure said breach, and then diligently commence and continue such cure according to the written plan); or

13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan.)

13.3 In the event of termination by District as provided herein for cause:

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

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

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

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

#### 14. Termination of Agreement for Convenience

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

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

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

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

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

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

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

**17. Notice to the Parties**

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

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

To District:

[REDACTED]

To Consultant:

[REDACTED]

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

## 18. Ownership of Results/Work for Hire

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

**19. Audit and Inspection Records**

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

**20. Subcontracting/Assignment/ District Employees**

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

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

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

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

- 21.1 Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor. To the extent applicable, Consultant shall comply with all federal, state, and local laws (including, without limitation, County ordinances, rules, and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- 21.2 Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor.
- 21.3 Consultant shall, if requested to do so by the District, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor.
- 21.4 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 21.5 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 21.6 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- 21.7 The Consultant shall include the provisions set forth in 21.2 through 21.6 (above) in each of its subcontracts.

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

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

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

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

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

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

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

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

- 25.1 Consultant shall subcontract with [REDACTED], for services to be provided under this Agreement in an amount totaling of at least twenty percent (20%) *(or adjust percentage if more than or less than)* of the contract value of this Agreement in accordance with COUNTY's Small and Emerging Locally owned Business provision, which includes but is not limited to:
- a. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
  - b. As is applicable, Contractor shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this contract.
  - c. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
  - d. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System. Contractor and Contractor's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the Elation web-based compliance system as described in Exhibit E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation compliance system. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

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

**26. First Source Program**

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

**27. Disputes**

- 27.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District Engineer or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party, and a meeting between the District representative and principal of the Consultant shall then take place within five days of the request.
- 27.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.
- 27.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

**28. Agreement Made in California; Venue**

- 28.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.
- 28.2 The parties shall execute one original and three copies of this Agreement.

**29. Compliance with Laws**

- 29.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories, and/or verifications as requested by such authorities for security clearances or compliance.
- 29.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

**30. Construction**

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

**31. Miscellaneous**

- 31.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.
- 31.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.
- 31.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 31.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 31.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

**32. Entire Agreement; Modifications of Agreement**

- 32.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 32.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 32.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

- 32.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 32.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 32.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

### **33. Labor Code Requirements**

- 33.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the District, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 33.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 33.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 33.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.

- 33.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 33.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 33.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 33.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.
- 33.12 In accordance with Section 1776 of the Labor Code:
- 33.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
- 33.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
- 33.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- 33.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
- 33.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.

- 33.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 33.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 33.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 33.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 33.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 33.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
- 33.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.
- 33.13.2 This provision applies to all classifications, including truckers.
- 33.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with District representatives may result in conditioning amounts of any progress payment due.
- 33.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 33.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

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

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

“District”

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

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

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

“Consultant”

[REDACTED]

By: \_\_\_\_\_  
[REDACTED]

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

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

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

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

## EXHIBIT L

# ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

### *Request for Proposal and Statement of Qualifications for Construction Management Services*

## DEBARMENT AND SUSPENSION CERTIFICATION

For Procurements Over \$25,000

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

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

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

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

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

BIDDER: \_\_\_\_\_

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

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

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

**ALAMEDA COUNTY FLOOD CONTROL & WATER  
CONSERVATION DISTRICT**

*Request for Proposal and Statement of Qualifications  
for  
Construction Management Services*

**The Iran Contracting Act (ICA) of 2010**

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

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

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

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

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

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

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

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

# ATTACHMENT A

## List of Tests Performed in Materials Testing Services

| ITEMS <sup>1</sup> |                                                                                              | Test Method                              |
|--------------------|----------------------------------------------------------------------------------------------|------------------------------------------|
| <b>CE</b>          | <b>CERTIFICATIONS &amp; EQUIPMENT</b>                                                        |                                          |
| CE1                | Coring Service (one person)                                                                  | ASTM C42,<br>ASTM C42M                   |
| CE2                | Coring Service (two person crew)                                                             | ASTM C42,<br>ASTM C42M                   |
| CE3                | Full time sample runner from field to lab and return (mileage included)                      | n/a                                      |
| CE4                | Field Sample Pickup and Delivery                                                             | n/a                                      |
| CE5                | Laboratory Technician at Asphalt Plant <sup>6</sup>                                          | n/a                                      |
| CE6                | Concrete Batch Plant or Casting Yard Inspector                                               | n/a                                      |
| CE7                | Nuclear Density Gage                                                                         | ASTM D6938,<br>ASTM D2950<br>ASTM D2950M |
|                    | Pachometer                                                                                   |                                          |
| <b>TSA</b>         | <b>TESTING OF SOIL AND AGGREGATES</b>                                                        |                                          |
| TSA 1              | Laboratory Compaction Characteristics of Soil (Standard Proctor)                             | ASTM D698                                |
| TSA 2              | Laboratory Compaction Characteristics of Soil (Modified Proctor)                             | ASTM D1557                               |
| TSA 3              | Plasticity Index                                                                             | ASTM D4318                               |
| TSA 4              | Resistance (R-Value) test, untreated sample, 3 specimen HVEEM Stabilometer Test              | ASTM D2844                               |
| TSA 5              | Resistance (R-Value) test, lime or cement treated Lab compaction test                        | CAL 302                                  |
| TSA 6              | Bulk Density and Voids in Aggregate                                                          | ASTM C29                                 |
| TSA 7              | Determining the Percentage of Fracture in Coarse Aggregate                                   | AASHTO TP 61<br>ASTM D5821               |
| TSA 8              | Uncompacted Void Content of Fine Aggregate                                                   | AASHTO T 304<br>or ASTM C 1252           |
| TSA 9              | Flat Particles, Elongated Particles, or Flat and Elongated Particles in Coarse Aggregates    | ASTM D4791                               |
| TSA 10             | Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact (LA Rattler) | ASTM C131                                |
| TSA 11             | Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact (LA Rattler) | ASTM C131                                |
| TSA 12             | Soundness of Aggregates, per sieve size, five cycles                                         | ASTM C88                                 |
| TSA 13             | Organic Impurities in Fine Aggregates for Concrete                                           | ASTM C40                                 |
| TSA 14             | Cleanness Value of Coarse Aggregate                                                          | CAL 227                                  |
| TSA 15             | Aggregate Durability Index                                                                   | CAL 229                                  |
| TSA 16             | Density, Relative Density, and Absorption of Coarse Aggregates                               | ASTM C127                                |
| TSA 17             | Density, Relative Density, and Absorption of Fine Aggregates                                 | ASTM C 128<br>CT 205                     |
| TSA 18             | Percentage of Crushed Particles                                                              | ASTM C136                                |
| TSA 19             | Sieve analysis (coarse aggregates)                                                           | ASTM C117,<br>ASTM C 136                 |
| TSA 20             | Wash and Sieve Analysis for aggregates finer than #200 sieve                                 |                                          |
| TSA 21             | Total Evaporable Moisture Content of Aggregate by Drying                                     | ASTM C566                                |
| TSA 22             | Paver Stone Sand Degradation Test Set (6-hours, 50 rpms) <sup>8</sup>                        | ASTM D2419 or<br>CAL 217                 |
| TSA 23             | Sand equivalent                                                                              |                                          |
| TSA 24             | Cement Treated Base Laboratory Design (3 specimens)                                          |                                          |

| ITEMS <sup>1</sup> |                                                                                                                                             | Test Method                        |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <b>TAB</b>         | <b>TESTING OF ASPHALT BINDERS</b>                                                                                                           |                                    |
| TAB 1              | Effect of Heat and Air on a Moving Film of Asphalt (Rolling Thin-Film Oven Test)                                                            | AASHTO 240<br>ASTM D 2872          |
| TAB 2              | Accelerated Aging of Asphalt Binder Using a Pressurized Aging Vessel (PAV)                                                                  | AASHTO R 28                        |
| TAB 3              | Viscosity Determination of Asphalt Binder Using Rotational Viscometer                                                                       | AASHTO T 316<br>ASTM D 4402        |
| TAB 4              | Determining the Rheological Properties of Asphalt Binder Using a Dynamic Shear Rheometer (DSR)                                              | AASHTO T 315                       |
| TAB 5              | Determining the Flexural Creep Stiffness of Asphalt Binder Using the Bending Beam Rheometer (BBR)                                           | AASHTO T 313                       |
| TAB 6              | Determination of Low-Temperature Performance Grade (PG) of Asphalt Binders                                                                  | AASHTO PP 42                       |
| TAB 7              | Determining the Fracture Properties of Asphalt Binder in Direct Tension (DT)                                                                | AASHTO T 314                       |
| TAB 8              | Solubility of Asphalt Materials in Trichloroethylene <sup>10</sup><br>Penetration, each temperature (77, 95 or 115 degrees F) <sup>10</sup> | ASTM D2042<br>ASTM D5              |
| TAB 9              | Distillation of Road Tars, each <sup>10</sup>                                                                                               | ASTM D20                           |
| TAB 10             | Viscosity (Saybolt or Capillary), each <sup>10</sup>                                                                                        | ASTM D2170 or<br>D88               |
| TAB 12             | Ductility <sup>10</sup>                                                                                                                     | ASTM D113                          |
| TAB 13             | Density of Semi-Solid Bituminous Materials <sup>10</sup>                                                                                    | ASTM D70                           |
| <b>TAM</b>         | <b>TESTING ASPHALT CONCRETE MIXES</b>                                                                                                       |                                    |
| TAM 1              | Moisture of Volatile Distillates Bituminous Paving Mixture                                                                                  | ASTM D1461                         |
| TAM 2              | Marshall stability test, premixed sample per specimen                                                                                       | ASTM D6927                         |
| TAM 3              | Marshall stability test, lab mixed sample, per specimen                                                                                     | ASTM D6927                         |
| TAM 4              | HVEEM stabilometer test preparation, premixed sample per specimen                                                                           | ASTM D1560<br>(CAL 366)            |
| TAM 5              | HVEEM stabilometer test, premixed sample, per specimen, including unit weight                                                               | ASTM D1560                         |
| TAM 6              | HVEEM stabilometer test, lab mixed sample per specimen                                                                                      | ASTM D1560                         |
| TAM 7              | HVEEM Cohesimeter in conjunction with stabilometer                                                                                          | ASTM D1560                         |
| TAM 8              | Theoretical maximum specific gravity of Paving Mixtures (Rice Gravity) per specimen                                                         | ASTM D2041                         |
| TAM 9              | Bulk specific gravity and density of compacted bituminous mixtures per specimen                                                             | ASTM D2726                         |
| TAM 10             | Percent Air Voids in Compacted Dense and Open Bituminous Paving Mixtures                                                                    | ASTM D3203                         |
| TAM 11             | Centrifuge kerosene equivalent, percent oil retained (coarse and fine) <sup>10</sup>                                                        | CAL 303                            |
| TAM 12             | Swell Test <sup>10</sup>                                                                                                                    | CAL 305                            |
| TAM 13             | Moisture vapor susceptibility <sup>10</sup>                                                                                                 | CAL 307                            |
| TAM 14             | Theoretical Maximum Specific Gravity and Density of Bituminous Paving Mixtures                                                              | AASHTO T 209<br>and ASTM D<br>2041 |
| TAM 15             | Determining the Asphalt Binder Content of Hot-Mix Asphalt (HMA) by the Ignition Method                                                      | AASHTO T 308<br>and ASTM D<br>6307 |
| TAM 16             | Resistance of Compacted Bituminous Mixture to Moisture-Induced Damage                                                                       | AASHTO T 283                       |
| TAM 17             | Effect of Moisture on Asphalt Concrete Paving Mixtures                                                                                      | ASTM D 4867                        |

| ITEMS <sup>1</sup> |                                                                                                                                                                                                                    | Test Method  |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| TAM 18             | Determining the Fatigue Life of Compacted Hot-Mix Asphalt (HMA) Subjected to Repeated Flexural Bending                                                                                                             | AASHTO T 321 |
| TAM 19             | Determining Rutting Susceptibility of Asphalt Paving Mixtures Using the Asphalt Pavement Analyzer (APA)<br>Determining Rutting Susceptibility of Asphalt Paving Mixtures Using the Asphalt Pavement Analyzer (APA) | AASHTO TP 63 |
| TAM 20             | Determining the Permanent Shear Strain and Stiffness of Asphalt Mixtures Using the Superpave Shear Tester (SST)                                                                                                    | AASHTO T 320 |
| <b>TAI</b>         | <b>TESTING ASPHALT CONCRETE INSTALLED</b>                                                                                                                                                                          |              |
| TAI 1              | Bitumen Content                                                                                                                                                                                                    | ASTM D4      |
| TAI 2              | Extraction, % asphalt                                                                                                                                                                                              | ASTM D2172   |
| TAI 3              | Gradation on extracted sample, including wash                                                                                                                                                                      | ASTM D2172   |
| TAI 4              | Mechanical Size Analysis of Extracted Aggregate                                                                                                                                                                    | ASTM D5444   |
| <b>TC</b>          | <b>TESTING OF CONCRETE</b>                                                                                                                                                                                         |              |
| TC 1               | Compression, concrete, mortar, grout, or gunite compression core sample including mold                                                                                                                             | ASTM C39     |
| TC 2               | Flexure, concrete, 6x6x24 cure and break only                                                                                                                                                                      | ASTM C78     |
| TC 3               | Fresh unit weight, air content, yield                                                                                                                                                                              | ASTM C138    |
| TC 4               | Drying shrinkage, 3 samples/test, 28 days drying, linear shrinkage, concrete                                                                                                                                       | ASTM C157    |
| TC5                | Making and Curing Concrete Test Specimens in the Laboratory                                                                                                                                                        | ASTM C192    |
| TC 6               | Compression, concrete, shotcrete, 3 tests of cores, from 4" x 12" x 12" panel                                                                                                                                      | ASTM C39     |
| TC 7               | Mortar strengths relative to Ottawa sand                                                                                                                                                                           | CAL 515      |
| TC 8               | Air Voids in Fresh Concrete by Volumetric Method                                                                                                                                                                   | ASTM C 173   |
| TC 9               | Air Voids in Fresh Concrete by Pressure Method                                                                                                                                                                     | ASTM C 231   |
| TC 10              | Test Drill Cores of Concrete                                                                                                                                                                                       | ASTM C 42    |
| TC 11              | Cylindrical Concrete Sample Testing Strength                                                                                                                                                                       | ASTM C 496   |
| TC 12              | ASTM C 642 Test for Density, Absorption, and Voids                                                                                                                                                                 | ASTM C 642   |
| TC 13              | Chloride Ion in Concrete                                                                                                                                                                                           | AASHTO T260  |
| <b>TMB</b>         | <b>TESTING OF MASONRY AND BRICK (3 units minimum)</b>                                                                                                                                                              |              |
| TMB 1              | Absorption and saturation coefficient of moisture content                                                                                                                                                          | ASTM C67     |
| TMB 2              | Compression, concrete block, or brick CMU                                                                                                                                                                          | ASTM C140    |
| <b>TRS</b>         | <b>TESTING OF REINFORCING STEEL</b>                                                                                                                                                                                |              |
| TSS 1              | Tensile and bend test, No. 3 through No. 10                                                                                                                                                                        | ASTM A370    |
| TSS 2              | Tensile and bend test, No. 11                                                                                                                                                                                      | ASTM A370    |
| TSS 3              | Tensile test No. 14                                                                                                                                                                                                | ASTM A370    |
| TSS 4              | Tensile test No. 18                                                                                                                                                                                                | ASTM A370    |
| <b>TSS</b>         | <b>TESTING OF STRUCTURAL STEEL</b>                                                                                                                                                                                 |              |
| MD 1               | Tension test, reduced section                                                                                                                                                                                      | ASTM A370    |
| MD 2               | Tensile and bend test, to 1" thickness                                                                                                                                                                             | ASTM A370    |
| <b>TW</b>          | <b>TESTING OF WELDS</b>                                                                                                                                                                                            |              |
| TW 1               | Magnetic Particle Level II                                                                                                                                                                                         | ASNT         |
| TW 2               | Dye Penetrant Level II                                                                                                                                                                                             | ASNT         |
| <b>TGL</b>         | <b>TESTING OF GLUE LAMINATED LUMBER</b>                                                                                                                                                                            |              |
| TGL 1              | Core shear, per core                                                                                                                                                                                               | ASTM C273    |

❖ Above ASTM testing methods represent a sample of tests only. Additional tests may be required in specific projects. All corresponding California Test methods may be specified by the District.