



**INFORMAL REQUEST FOR  
QUALIFICATIONS FOR  
ON-CALL BIOLOGIST SERVICES**

Qualifications Due: Friday, May 6, 2022 at 2:00 p.m.

Public Works Department  
1201 W. 4<sup>th</sup> Street  
Antioch, CA 94509  
(925) 779-4129

## **INTRODUCTION**

The City of Antioch is requesting qualifications from consulting firms desiring to provide on-call biologist services for the City of Antioch's Routine Maintenance Agreement with the California Department of Fish & Wildlife. The City intends to develop a "Shortlist" of Biologist teams that will be called upon to provide services for any needed project or service within the scope of biologist services as needed for a three-year period and may be renewable for up to an additional two years (up to five years total).

Services will vary depending on City need. Assignments are anticipated to be mainly surveys; however, community outreach and project management assistance may be requested. Biologist teams are expected to include a California Licensed Biologist when Surveying Creek areas. Although the team will be selected as a whole, individual projects may not need the services of the entire team. Appropriate team members would be selected based on the scope of each project.

A Biologist team selected from the Shortlist will be provided a detailed scope of services, which will be used to negotiate a not-to-exceed project fee based on pre-approved Biologist billing rates. A scope of work will be provided to a Shortlist Biologist team concerning specific tasks and the Biologist will then return a brief description of the approach to the task, specific members of the project team, proposed fees and a schedule for its completion for City approval. The City's Project Manager will determine if the approach, schedule and negotiated fees are acceptable. Fees submitted for each project shall be based upon those fees listed in your response to this proposal.

## **OVERVIEW**

The City anticipates that a variety of surveys and related services may be needed during the next three years. The need to balance City staff resources, re-prioritize project needs, or emergency/urgent situations may drive the need for these on-call Biologist services.

Examples of requests will be annual surveys for a particular species within an Antioch creek, daily reconnaissance surveys in sensitive species areas, and pre-construction surveys prior to start of a project. The expectation is that the Biologist teams will develop projects per current City of Antioch Routine Maintenance Agreement with Department of Fish & Wildlife. Thorough understanding of these Standards, Specifications and Guidelines is expected. Accurate cost estimates for assignments will be required.

Occasional, unanticipated requests might also need immediate attention. Each Biologist shall address their capacity for immediate response in their Proposal.

## **OBJECTIVES**

The purpose of this Request for Qualifications is to develop a list containing more than one Biologist team that can provide the City with On-Call Biologist Services on an as-needed basis.

The goal of this proposal is to create a "Shortlist" of qualified Biologists that will be available for use by City staff on projects related to the proper utilization of the Department of Fish and Wildlife's Routine Maintenance Agreement as part of the City of Antioch's Creek Maintenance Program.

## **SCOPE OF SERVICES**

Selected qualified firms shall provide On-Call Biologist services that may be requested by the City

during the term of this agreement in a prompt, professional, and workmanlike manner in accordance with the standards of the Environmentalist profession. All work, unless otherwise specified, shall be performed on a time and materials basis, and completed to the satisfaction of the Project Manager within the time periods allocated, or as mutually agreed to at the beginning of the assignment. The following list provides examples of services that may be requested. Not all services may be needed on a specific project. Actual services will be project based according to need.

### **Biologist Services (at a minimum)**

1. Annual Surveys of City of Antioch Creeks, Storm Channels and Detention Basins.
2. Assistance with Verification Request Forms (VRF).
3. 48-hr Reconnaissance Level Surveys for Special Species.
4. Daily Clearance Surveys & On-Site Monitoring for Special Species.
5. Seven (7) day Migratory Bird Survey including Methodology of Survey and communication assistance with CDFW if active nests are found in project area.

All Biologist services must be available by the Biologist Team. The list above is at a minimum of what will be needed, additional services per the City of Antioch Routine Maintenance Agreement may be needed. A draft redacted RMA is attached herein for reference (Exhibit A).

### **PERIOD OF AWARD**

The effective date of providing the required services shall begin May 15<sup>th</sup>, 2022 and continue until June 30, 2025 with the option to extend an additional two years.

If the City desires to extend the contract, not later than thirty (30) days prior to expiration, the City shall send a notice in writing to the vendor requesting firm pricing for the next twelve-month period. After the City evaluates the firm pricing proposal from the consultant, it will determine whether to extend the contract. All awards and extensions are subject to annual appropriation of funds. The provisions of the foregoing paragraphs with respect to extensions of the terms of the contract shall be null and void if the contract has been terminated or revoked during the initial term of extension thereof. All decisions to extend the contract are at the option of the City.

### **SUBMITTAL REQUIREMENTS**

Please prepare and organize your Qualifications based on the requirements provided below. Any other information you would like to include should be placed in a separated section at the back of your Submittal. Please note however that the RFQ submittal is limited to **20 pages maximum** (excluding resumes) and should be submitted on 8 ½ x 11" paper, in 12-point font.

1. Interested firms are requested to submit three (3) sealed copies of their Qualifications and/or one electronic copy in PDF format as follows: Enclose a cover letter not to exceed one page describing the firm's interest and commitment to perform On-Call Biologist Services. The person authorized by the firm to negotiate a contract with the City of Antioch shall sign the cover letter. If submitting via Electronic only, a readable file must be submitted on time to Christine Raposo at [craposo@antiochca.gov](mailto:craposo@antiochca.gov) with a CC to Jeff Cook at [jcook@antiochca.gov](mailto:jcook@antiochca.gov). Electronic copies will receive an email immediately upon receipt of Qualification.

2. State the qualifications and experience of the firm/individual(s). Please emphasize the specific qualifications and experience with engagements of similar scope and complexity.
3. Provide at least three references (names and current phone numbers) from recent work (previous five years) similar to the service categories your firm is interested in providing. Include a brief description of the role associated with the reference, and the role of the respective team member.
4. List key staff members, including identification of the Senior Biologist.
5. Include an organization chart, including those who may take a role in as a consultant to the City.
6. Present proposed compensation rates.
7. Present availability and timelines related to Surveys that may be needed.
8. Provide confirmation of your firm's ability to meet the City's Consultant Service Agreement and insurance requirements (Exhibit B). Exceptions to the Agreement and insurance requirements shall be specifically noted in the Proposal.

## **SELECTION CRITERIA**

All qualifications will be evaluated based on the criteria below.

- Qualifications and experience of key project team members, particularly the Project Manager, qualified technical and support personnel - 25 points
- Experience with local municipalities and agencies - 25 points
- Ability to respond in a timely manner – 15 points
- Quality and completeness of the proposal – 10 points
- Ability to meet contract and insurance requirements – 10 points
- Rates & Fees for all applicable classifications included in RMA – 15 points

## **CONTRACT TERMS AND CONDITIONS**

It is anticipated that the selected consultant will work under a three-year Service Agreement with the City. Payment for services provided under the service agreement will be on a "time and materials" basis with a not-to-exceed limit of \$50,000 per year. At the end of the three-year term, the City may renew the consultant's Service Agreement for two one-year period extensions with a not-to-exceed limit of \$50,000 per year. Services will be requested on an as needed basis and there is no guarantee of work or that all funds will be used.

## **CONTRACT TERMS AND CONDITIONS**

Enclosed is a copy of the City of Antioch's Consultant Service Agreement. By submitting a proposal for this work, a firm agrees to comply with all terms and conditions outlined in the agreement.

It is anticipated that the selected consultant(s) will work under a five-year Agreement with the City. At the end of the five-year term, the City may renew the Agreement for up to two additional years.

It is anticipated that from the proposals submitted, City staff will be able to select the firm best suited to meet the City's needs. However, if that is not possible, the City will ask a "short list" of firms to meet with staff to discuss the project and the firm's proposal. The City will negotiate a

Consultant Service Agreement for the work after staff has determined the best qualified firms.

No compensation will be due any firm for preparation of a written proposal or for meeting with staff after a “short list” has been determined.

### **SUBMISSION INSTRUCTIONS**

Three (3) bound, and/or one (1) electronic copy of the proposal **must be submitted no later than 2:00 p.m. on Friday, May 6<sup>th</sup>, 2022** to:

Christine Raposo  
Public Works Department  
City of Antioch  
1201 W. 4<sup>th</sup> Street  
Antioch, CA 94509  
craposo@antiochca.gov

Any questions regarding the above should be directed to Jeff Cook, Public Works Department at (925) 779-6962 or [jcook@antiochca.gov](mailto:jcook@antiochca.gov) with a CC to Christine Raposo at [craposo@antiochca.gov](mailto:craposo@antiochca.gov).

### **Attachments**

- A. *Draft Routine Maintenance Agreement (Redacted)*
- B. *City of Antioch Consultant Service Agreement*

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
BAY DELTA REGION  
2825 CORDELIA ROAD, SUITE 100  
FAIRFIELD, CA 94534  
(707) 428-2002



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION NO. 1600-2021-0005-R3  
VARIOUS SITES

CITY OF ANTIOCH—PUBLIC WORKS DEPARTMENT  
ROUTINE MAINTENANCE WORK

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Antioch, as represented by John Samuelson.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on March 3, 2021, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

## **PROJECT LOCATION**

This Agreement authorizes routine maintenance of creeks, storm channels, and detention basins that fall under the jurisdiction and responsibility of Permittee. Work locations are within City of Antioch city limits, are denoted on the Location Map attached to this Agreement as Exhibit A and include:

- Los Medanos Storm Channel, Segment A-1
- Markley Creek, Segments B-0, B-1, B-2 and B-3, B-4, B-5, Black Diamond Detention Basins A&B
- West Antioch Creek, Segments C-1, C-2, C-3, C-4, C-5, C-6, C-7, and C-8

- East Antioch Creek and Lindsay Detention Basin, Segments D-0, D-1, D-2, D-3, D-4, D-5, D-6 D-7, D-8, D-9, and D-10
- Vineyard Detention Basin and K-Mart Detention Basin

## PROJECT DESCRIPTION

"Agreement for routine maintenance" means an Agreement that: (1) covers only multiple routine maintenance projects that the entity will complete at different time periods during the term of the Agreement; and (2) describes a procedure the entity must follow for any maintenance projects the Agreement covers.

"Routine maintenance work" means (project) work performed regularly by Permittee, within the Project Locations identified above, to maintain the functional and structural integrity of its facilities.

"Project" means one activity, or two or more interrelated activities that could or will affect similar fish and wildlife resources. Unless otherwise approved in writing by the Department, prior to commencement of project activities, a project will occur within the same watercourse and/or its immediate tributaries and the duration will not exceed 30 calendar days from the date project activities were initiated.

Unless otherwise noted, the activities authorized in this Agreement are "seasonal activities", defined as activities that shall be conducted during specific work periods (defined in Measure 2.1) to minimize adverse impacts to fish and wildlife and their habitats. Removal or modification of beaver dams are not covered under this Agreement.

Routine maintenance activities authorized under this Agreement are limited to the following:

- *Removal of Sediment in Channel Beds* - Minor sediment removal and dredging of accumulations of silt and sediment in earthen and concrete-lined channels and sediment basins to maintain channel and basin capacity, subject to the limitations set forth in Measure 2.29 of this Agreement;
- *Removal of Obstructions around Structures and Facilities* – Removal of trash, debris, non-living vegetation (e.g., leaves, uprooted cattails) and fallen trees and branches that could inhibit flows or damage structures and facilities, such as flap-gates or other control devices;
- *Vegetation Management* – Removal of living vegetation in the channel and on the banks using hand tools, mechanical vegetation cutters or shredders, and/or pesticides as set forth in Permittee's Aquatic Pesticide Application Plan (APAP) prepared pursuant to the Notice of Intent to Comply with NPDES Permit ~~the Agreement~~ (Exhibit B). Heavy equipment will be staged at top of bank and

used for vegetation removal only when the channel is dry. Trees and woody vegetation may be trimmed;

- *Erosion Control and Planting* - Placement of erosion control fabrics and other bio-engineered systems, and planting of native vegetation and trees to control bank erosion and slippage and to provide channel canopy;
- *Bank Stabilization and Erosion Control* - Replenishment of riprap, armor, concrete or gunite, in-kind within the footprint of existing or previously riprapped areas, to restore bank stability and integrity and subject to the limitations set forth in Measure 2.29;
- *Culvert Maintenance* - Maintenance and repair of existing culverts, consisting of replacement of deteriorating or collapsed culverts, unplugging of culverts, and headwall reinforcement with clean riprap; and
- *Fencing Maintenance* - Removal, placement, or repair of existing fences and railings to ensure public safety and channel security;
- *Anthropogenic Remediation* - Removal of trash/debris associated with cleanup of unauthorized encampments in sensitive areas or areas requiring repair of existing bank stabilization and/or erosion control.

Equipment used will vary by maintenance activity but is expected to include a pickup truck with a skid-mounted spray unit, dump trucks, a tractor with a mowing attachment, a front loader, a backhoe, and hand tools. No heavy equipment will operate in an active (flowing) stream channel.

## PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include the following, and are referred to hereafter as Covered Species:

Common Name	Scientific Name	Status
<b>Plants</b>		
Delta mud wort	<i>Limosella australis</i>	2B.1
Delta tule pea	<i>Lathyrus jepsonii</i> var. <i>jepsonii</i>	1B.2
Mason's lilaeopsis	<i>Lilaeopsis masonii</i>	1B.1
Woolly rose-mallow	<i>Hibiscus lasiocarpus</i> var. <i>occidentalis</i>	1B.2
<b>Amphibians</b>		
California red-legged frog	<i>Rana draytonii</i>	FT, SSC
California tiger salamander	<i>Ambystoma californiense</i>	FT, ST



Western spadefoot	<i>Scaphiopus hammondi</i>	SSC
Native amphibians		
<b>Birds</b>		
Alameda song sparrow	<i>Melospiza melodia pusillula</i>	SSC
American peregrine falcon	<i>Falco peregrinus anatum</i>	SFP
Bald eagle	<i>Haliaeetus leucocephalus</i>	SE, SFP
Burrowing owl	<i>Athene cunicularia</i>	SSC
California black rail	<i>Latterallus jamaicensis coturniculus</i>	ST, SFP
Golden eagle	<i>Aquila chrysaetos</i>	SFP
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC
Northern harrier	<i>Circus cyaneus</i>	SSC
Ridgway's rail	<i>Rallus obsoletus</i>	FE, SFP
San Pablo song sparrow	<i>Melospiza melodia samuelis</i>	SSC
Short-eared owl	<i>Asio flammeus</i>	SSC
Suisun song sparrow	<i>Melospiza melodia maxillaris</i>	SSC
Swainson's hawk	<i>Buteo swainsoni</i>	ST
Tricolored blackbird	<i>Agelaius tricolor</i>	ST
White-tailed kite	<i>Elanus leucurus</i>	SFP
Yellow-breasted chat	<i>Icteria virens</i>	SSC
Yellow-headed blackbird	<i>Xanthocephalus</i>	SSC
Yellow warbler	<i>Setophaga petechia</i>	SSC
Nesting and migratory birds		
<b>Fish</b>		
Chinook Salmon—Central Valley spring-run ESU & fall/late fall-run ESU	<i>Oncorhynchus tshawytscha</i>	FT, ST; SSC
Delta Smelt	<i>Hypomesus pacificus</i>	FE, SE
Green sturgeon—Southern DPS	<i>Acipenser medirostris</i>	FT, SSC
Hardhead	<i>Mylopharodon conocephalus</i>	SSC
Longfin Smelt	<i>Spirinchus thaleichthys</i>	FC, ST
Native fish		
Pacific Lamprey	<i>Entosphenus tridentate</i>	SSC
River Lamprey	<i>Lampetra ayersi</i>	SSC
Sacramento Hitch	<i>Lavinia exilicauda</i>	SSC

Sacramento Perch	<i>Archoplites interruptus</i>	FT, ST
Sacramento Splittail	<i>Pogonichthys macrolepidotus</i>	SSC
Steelhead—Central Valley DPS/ Central Coast DPS	<i>Oncorhynchus mykiss irideus</i>	FT

### ***Invertebrates***

Benthic macroinvertebrates

### ***Mammals***

American badger	<i>Taxidea taxus</i>	SSC
American beaver	<i>Castor canadensis</i>	
Pallid bat	<i>Antrozous pallidus</i>	SSC
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	FE/ST
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC
Western red bat	<i>Lasiurus blossevillei</i>	SSC

Fossorial mammals

Roosting bats

### ***Reptiles***

California glossy snake	<i>Arizona elegans occidentalis</i>	SSC
Giant garter snake	<i>Thamnophis gigas</i>	FT/ST
Silvery legless lizard	<i>Anniella pulchra</i>	SSC
Western pond turtle	<i>Emys marmorata</i>	SCC

### ***Other Resources***

In-stream habitat

Riparian vegetation

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**Notes:** FE = federally endangered under ESA; FT = federally threatened under ESA; SE = state endangered under CESA; SC = state candidate species under CESA; SFP= state fully protected; SSC = state species of special concern. CNPS ranking system: 1B= plants rare, threatened, or endangered in California and elsewhere; 2B = plants rare, threatened or endangered in California, but common elsewhere. Threat ranks: 0.1 = seriously threatened in California; 0.2 = moderately threatened in California.

The adverse effects the project could have on the fish or wildlife resources identified above without implementation of the Measures to Protect Fish and Wildlife Resources specified below, include:

- Direct take and/or disturbance as a result of construction activities;
- Disturbance and/or harm to individuals and resident populations;

- Loss or degradation of in-stream habitats;
- Temporary or permanent loss of existing riparian and wetland vegetation; and,
- Construction-related discharge of sediment and other materials hazardous to fish and wildlife and associated turbidity.

## **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement. Permittee shall provide the necessary safety equipment that is required for site entry upon request from CDFW personnel.
- 1.5 Inspections. CDFW personnel or its agents may inspect the routine maintenance activities performed at any of the work sites at any time. As a result of field inspection, CDFW may require that additional conditions be applied to specific activities to protect sensitive biological resources. Such conditions may be amended into this Agreement with the agreement of both parties, or if an exception to authorized activities is identified, Permittee may be asked to submit separate written notification to CDFW Bay Delta Region pursuant to Measures 1.7 and 1.8, below.

- 1.6 Authorized Routine Maintenance Activities. Only those activities specifically described in the Project Description with written approval for coverage from CDFW shall be conducted under this Agreement.
- 1.7 Verification Request Form (VRF). The VRF is provided to the Permittee as an Exhibit to this Agreement (Exhibit C). The VRF may be completed by the Biological Monitor(s) or Construction Monitor(s) but shall be reviewed and approved by the Qualified Biologist prior to submitting to CDFW.
  - 1.7.1 Submission of the VRF. The Permittee scientific staff shall complete the VRF and submit it to the contact indicated in this Agreement (see "Contact Information").
  - 1.7.2 Amendment of the VRF. The VRF may be administratively amended through the term of this Agreement, to reflect changes in contact information, only.
  - 1.7.3 VRF Fees. Fees associated with the projects identified by each VRF shall be submitted annually to CDFW (see Measure 4.5.5).
- 1.8 Content of the VRF. At minimum, the VRF shall include the following:
  - 1.8.1 Project Description. Provide the following information for each project:
    - 1.8.1.1 Description of the type and scope of work planned;
    - 1.8.1.2 Location and waterway of the activity or if multiple activities, the location of each activity;
    - 1.8.1.3 Location of staging areas and spoils placement;
    - 1.8.1.4 Name of waterway(s) affected (if known) and hydrologic connectivity;
    - 1.8.1.5 Type of activity and equipment used;
    - 1.8.1.6 Estimated acreage of impacted area (temporary or permanent) and linear feet of the work, a map outlining impacts, and representative photos of existing site conditions;
    - 1.8.1.7 Impacts by habitat type (e.g., dominant vegetation community, aquatic emergent, shaded riverine aquatic, etc.) and representative photos of any important fish and wildlife habitat features (e.g., snags and nests in the terrestrial environment, large woody material, deep pools, and undercut banks in

aquatic habitat);

1.8.1.8 Volume and type of materials displaced, removed, or added;

1.8.1.9 If and how the project site will be dewatered;

1.8.1.10 Density and acreage of vegetation to be affected. If tree over four inches diameter at breast height (DBH) will be modified by project activities then provide the DBH species, and description of each;

1.8.1.11 Describe in detail any project that exceeds the threshold measurements identified in this Agreement (e.g., tree trimming height, acreage amounts) for CDFW's consideration; and

1.8.1.12 Identify projects previously approved by CDFW but not started or completed from the previous quarter.

1.8.2 Large Woody Material (LWM). For proposed LWM removals, provide a written analysis and concurrence from a Qualified Biologist and hydrologist or fluvial geomorphologist on the necessity and feasibility of alternative actions other than complete removal to retain in-stream habitat features shall be provided with the quarterly notification reports for all proposed LWM removal activities. Examples of alternative actions to include in the analysis may include notching large, downed tree trunks in such a manner as to ensure they break apart in high flow events or cutting branches to prevent brush and other debris from snagging and building up on the LWM.

1.8.3 Project Timing. Identify the anticipated dates work will be conducted, the estimated number of days needed to complete the project, and the proposed phasing of multiple activities if more than one activity will occur in the same location during the same quarter.

1.8.4 Photos. Representative photos for large-scale sites or site-specific photos for discrete locations (direction, magnification, and description of photo points).

1.8.5 Engineering and/or design plans. (If applicable)

1.8.6 Biological Resource Surveys. Biological resource surveys shall include:

1.8.6.1 Description of project site environmental setting;

1.8.6.2 Where pre-project surveys are required based on existing

conditions and potential for special status species occurrences, a summary of survey methodology and results;

- 1.8.6.3 Type, frequency, and date(s) of biological surveys conducted;
  - 1.8.6.4 California Natural Diversity Database (CNDDDB) occurrences within one mile of the project;
  - 1.8.6.5 Results of biological surveys (if appropriate);
  - 1.8.6.6 Description of survey results;
  - 1.8.6.7 Map of special status species or nesting bird locations including required buffers (if needed) and indicate the project location; and
  - 1.8.6.8 Description and proposed timing of additional pre-project surveys to be conducted if necessary.
- 1.8.7 Avoidance and Minimization Measures. Describe the avoidance and minimization measures that will be implemented for each project (including work windows and species-specific measures).
- 1.8.8 Proposed Mitigation. Describe the mitigation proposed to offset the impacts of the individual project. Identify the type, amounts, and locations of mitigation (e.g., on-site/off-site invasive species removal, native habitat creation or enhancement, or purchase of mitigation or conservation bank credits, etc.).
- 1.9 Permittee Submission of VRF. Permittee shall complete and submit to CDFW a VRF for each proposed maintenance project. The VRF(s) shall be submitted in batch once per quarter, no less than 10 business days prior to commencing the proposed maintenance activities (see Measure 4.1) except for requests submitted per Measure 1.9.2 below.
- 1.9.1 Changes in Project Scope or Timing. If Permittee delays the project start date specified in the VRF beyond the original reporting quarter, the Permittee shall submit a revised VRF for the appropriate work quarter. If the scope of a project changes (e.g. a change in activities or impacts) the Permittee shall notify CDFW of changes at least 10 days prior to the initiation of project activities and shall not proceed with the project without written approval from CDFW.
  - 1.9.2 Urgent Review Requested. In cases where the Permittee must expedite work based on the limited availability of work crews, the need for

specialized equipment, anticipated weather conditions, and other limiting factors, the Permittee shall submit to CDFW a VRF for the work a minimum of two (2) business days prior to beginning said work. The VRF shall be submitted as described in Measure 1.8 of this Agreement and shall include a description of the reason why urgent review is needed.

#### 1.10 CDFW Processing of the VRF

1.10.1 Receipt of VRF. Upon receipt of a VRF, CDFW may acknowledge receipt in the form of an email response to the Permittee staff identified on the VRF. However, such acknowledgement of receipt shall not be deemed an approval by CDFW. If the Permittee fails to provide the necessary information required by this Agreement or requested by CDFW to complete its review of the VRF, the 10-business day timeline will not start.

1.10.2 Consistency with this Agreement. Within 10 business days of receipt, CDFW shall determine if the Covered Activity described in the VRF is covered by and consistent with this Agreement (this may include a site visit by CDFW staff) and provide response to the Permittee as described below.

1.10.2.1 Concurrence of Work. If CDFW determines the work described in the VRF is consistent with and covered by this Agreement, CDFW staff will complete the bottom portion of the submitted VRF, check the appropriate "Notice of Concurrence" box and return the approved VRF to the Permittee staff identified on the VRF (and any Permittee employees on the distribution list) stating the Permittee may proceed with the work described in the VRF. Permittee shall complete the Covered Activities in accordance with the terms and conditions of this Agreement.

1.10.2.2 Non-Concurrence of Work. If CDFW determines that the project described in the VRF is not covered by or consistent with this Agreement, CDFW shall complete the bottom portion of the submitted VRF, check the "Notice of Non-Concurrence" box and send it to the Permittee contact person identified in the VRF and any Permittee employees on the distribution list. If CDFW submits a notice of non-concurrence, CDFW shall specify the basis for its determination and describe the actions the Permittee will need to take, such as making the project consistent with this Agreement, or obtaining a separate

Agreement.

- 1.10.2.3 No Response from CDFW. If CDFW does not respond within 10 business days of receipt, the VRF shall be considered approved by CDFW, and the Permittee may commence work without additional approval.

- 1.11 Exceptions to Authorized Activities. Permittee shall submit separate written notification pursuant to Section 1602 of the California Fish and Game Code, together with the required fee prescribed in the most current CDFW Streambed Alteration Agreement fee schedule, and otherwise follow the normal notification process prior to the commencement of work activities in all cases where one or more of the following conditions apply:

- 1.11.1 The proposed work is not conducted on a routine basis (i.e., repeatedly within the Agreement term);
- 1.11.2 The nature of the proposed work is substantially modified from the work described in the Project Description of this Agreement;
- 1.11.3 CDFW advises Permittee that conditions affecting fish and wildlife resources have substantially changed at a specified work site or that such resources would be adversely affected by the proposed maintenance activity; and/or
- 1.11.4 The proposed work could adversely impact a State of California (State) Species of Special Concern or State or federally listed rare, threatened, endangered or candidate species or its habitat.

- 1.12 Unauthorized Take. This Agreement does not authorize the take, including incidental take, of any State or federally listed threatened or endangered species, or of species that are otherwise protected under FGC. Permittee may be required, as prescribed in the California and U.S. Endangered Species Acts, to obtain take coverage for State and federally listed species prior to commencement of the project. Any unauthorized take of listed species may result in prosecution and nullification of this Agreement.

- 1.13 Annual Staff Training. Permittee shall conduct an annual training program for all employees, contractors, or personnel working within the project site prior to performing any work. The program shall consist of a presentation from the Qualified Biologist that includes a discussion of the biology of the habitats and special status species identified in this Agreement and those with potential to be present at the project site. The Qualified Biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species,



penalties for violations, and project-specific protective measures included in this Agreement. Staff shall be trained to use protective measures to ensure that such species are not adversely impacted by routine maintenance activities. The training program shall be updated at least annually to reflect current special-status species management practices. Interpretation shall be provided for non-English speaking employees, contractors, or personnel otherwise working on the project site prior to their performing any work at the project site. Upon completion of the education program, employees, contractors, or personnel otherwise working on the project sites shall sign a form stating they attended the program and understand all protection measures, the sign-in sheet shall be submitted to CDFW with the Annual Report (Measure 4.5), and a copy shall be kept on the project site. A handout that summarizes the education program including images of special status species shall also be distributed to all personnel working on the project. These forms shall be filed at the worksite offices and be available to CDFW upon request. At least one biological staff person (see Measure 2.4) with up-to-date training in special-status species protective measures shall be present at each work site at all times.

## **2. Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

### *Work Periods*

- 2.1 Seasonal Work Period. To minimize adverse impacts to fish and wildlife and their habitats, work within streams and their associated riparian corridors shall be limited to **April 15 to October 15**, except for: a) work within an area with potential special status-species habitat (see Measure 2.8), which shall be limited to either **June 15 to October 15**, or **August 1 to November 30** for projects within or immediately upstream of the Delta and b) work associated with year-round activities (as specified in the Project Description). Installation of erosion control devices and site remediation activities outside the wetted portion of stream channels or in exceptional circumstances with written approval from CDFW are excluded from seasonal work period restrictions.
- 2.2 Daily Work Window. Permittee shall terminate all project activities covered under this Agreement 30 minutes before sunset and shall not resume until 30 minutes after sunrise. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area: <https://gml.noaa.gov/grad/solcalc/>.
- 2.3 Work Period in Dry Weather Only. Work within the stream and associated riparian corridor shall be restricted to periods of dry weather. Precipitation forecasts and

potential increases of stream flow shall be considered when planning construction activities. Construction activities shall cease, all equipment and materials shall be removed from the channel and all associated erosion control measures shall be in place at least 12 hours prior to the onset of precipitation. No work shall occur during a precipitation event. Construction activities halted due to precipitation may resume when precipitation ceases, the National Weather Service 72-hour weather forecast indicates a 30 percent or less chance of precipitation, and after a dry-out period of 48 hours for rain events (i.e., 0.25-inches within a 24-hour period). The National Weather Service forecast can be found at: <http://www.weather.gov>.

### *Biological Monitoring*

2.4 Qualified Biologist(s). Permittee shall submit the names and resumes of all biological personnel involved in conducting survey and/or monitoring work to CDFW for review at least **30 days** prior to initiating fish and wildlife surveys within the project site. Permittee is encouraged to use the Biologist Resume Form (Exhibit D), or another format containing the same information, to expedite CDFW's evaluation process. Permittee shall obtain written approval of biological personnel prior to the initiation of project surveys. Biological personnel are defined under this Agreement as follows:

2.4.1 A Qualified Biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the project area.

2.4.2 A Qualified Botanist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities focusing on rare or special-status plant species. The Qualified Botanist shall have a minimum of two years' experience conducting field surveys for rare or special-status plant species in California.

2.4.3 A Biological Monitor is an individual who shall have a minimum of four years of academic and professional experience in biological sciences and related resource management activities relevant to this project, has experience with construction level biological monitoring, the ability to recognize species in the project area, and who is familiar with the habits and behavior of those species.

2.4.4 A Construction Monitor is an individual appointed by the Qualified Biologist who has, *at minimum*, attended the Annual Staff Training (Measure 1.13), has the ability to recognize species in the project area, and who is familiar

with the habits and behavior of those species.

2.5 Biological Monitoring. A Qualified Biologist, Biological Monitor, or Construction Monitor shall be onsite for all projects in potential habitat for special status species or sensitive habitats, as set forth below. If sensitive species are detected during surveys by the Qualified Biologist, then *at minimum*, a Biological Monitor will be present for all project activities regardless of location.

2.5.1 After initial surveys by the Qualified Biologist, a Biological Monitor must be present while work is conducted in the following locations: Reaches B-2 through B-5 of Markley Creek including the Black Diamond Detention Basins A and B; Reaches C-1 and C6-C8 of West Antioch Creek; Reach D-0 of East Antioch Creek/Lindsey Detention Basin; Vineyard and K-Mart Detention Basins.

2.5.2 After initial surveys by a Qualified Biologist, a Construction Monitor must be present while work is conducted in the following locations: Reach A-1 of Los Medanos Storm Channel; Reaches B-0 and B-1 of Markley Creek; Reaches C-2 through C-5 of West Antioch Creek; Reaches D-1 through D-10 of East Antioch Creek/Lindsay Detention Basin.

2.5.3 Should a special status species be observed at the worksite, the Qualified Biologist shall be available to arrive on site within 1 to 2 hours when not required to be on site by the terms of this Agreement. If a Qualified Biologist, Biological Monitor, or Construction Monitor witnesses a potential violation of this Agreement, they shall notify CDFW immediately. Failure to consult immediately with CDFW on potential violations shall constitute grounds for CDFW to revoke the Biologist's or Monitor's monitoring authority and require the Permittee to stop work until another has been approved. If the Biologist appoints a Construction Monitor to oversee work activities, the Construction Monitor shall have training in avoidance and minimization measures specific to special-status species potentially present at the site. At a minimum, the Construction Monitor shall have attended the training specified in this Agreement. If asked by CDFW or another agency, the Construction Monitor shall be able to demonstrate familiarity with the terms and conditions of this Agreement.

2.6 Daily Clearance Surveys. Prior to initiation of project activities, a Qualified Biologist shall conduct surveys of the project work area, staging/stockpiling area, and all equipment and vehicles. Thereafter, a Biological Monitor or Construction Monitor shall inspect the work areas prior to commencing project activities. If the Qualified Biologist, Biological Monitor, or Construction Monitor determines that sensitive species are not present within the work area, work may commence.

- 2.7 General Cease Operations Authority. The Qualified Biologist or Biological Monitor shall have independent authority to stop all project activities if any special-status species enters the project area, if project activities pose imminent threat to fish and wildlife resources, or if project activities are out of compliance with the measures outlined in this Agreement. If a special-status species is observed within the project site, then all work shall halt and not continue until the wildlife leaves the area on its own accord.

*Special Status and Sensitive Species Measures*

- 2.8 Special-Status Species Habitat Assessments. Each year prior to the initiation of routine maintenance activities for the duration of the term of this Agreement a qualified biologist shall assess the physical site features using a CDFW-approved habitat assessment checklist to determine whether the site and/or surrounding areas are likely to support special-status species, this report shall be submitted in the annual project notification. The checklist, at minimum, will develop habitat assessment criteria for Alameda whipsnake, giant garter snake, California tiger salamander, California red-legged frog, western pond turtle, western burrowing owl, San Joaquin kit fox, San Francisco dusky-footed woodrat, American badger, and special-status plant species known to occur in the project vicinity. Permittee shall also consult the most recent update of the California Natural Diversity Database (CNDDDB) occurrences in the project area and determine whether the work site is within a reasonable dispersal distance of a known species occurrence. If potential habitat is found and/or CNDDDB instances are discovered, Permittee shall adhere to the measures of this Agreement and to special-status species assessment measures. If the area of activity is already subject to preconstruction survey the annual habitat assessment of the area shall not be required, provided the pre-construction survey is conducted annually by a Qualified Biologist in accordance with this Agreement, and the pre-construction surveys focus on all special-status species with the potential to inhabit the area.
- 2.9 Special Status and Migratory Birds. The Permittee is responsible for ensuring that the project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes. If project activities will occur during nesting bird season (February 15 to September 15 for raptors; March 15 to August 30 for passerines), the Qualified Biologist shall conduct a focused survey for active nests within **7 days** prior to the initiation of project-related activities. Surveys shall be conducted in all suitable habitat located at project work sites and in staging and storage areas. The minimum survey radii surrounding the work area shall be the following: 1) 250 feet for passerines; 2) 1,000 feet for larger raptors. Survey methodology shall be submitted in to CDFW for approval within 30 days of the finalization of this agreement, and no later than 7 days prior to the initiation of surveys. Survey results shall be submitted to CDFW prior to the commencement of project activities. If a lapse in project-related activities of 7 days or longer

occurs, another focused survey shall be conducted before project activities can be reinitiated. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with the Fish and Game Code of California. CDFW reserves the right to provide additional provisions to this Agreement designed to protect nesting birds.

2.9.1 Active Nests. The Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests should be continuously monitored by the Qualified Biologist for a minimum of two consecutive workdays to detect any signs of disturbance and behavioral changes as a result of the project. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. If signs of disturbance and behavioral changes are observed, the biologist shall cease work causing that behavioral change and shall contact the CDFW representative for guidance. After the Qualified Biologist has determined that the nesting birds are attenuated to construction presence, the nest may be monitored by a Biological or Construction Monitor provided there are no changes in site conditions (e.g., project activities, equipment used or noise levels) relative to the Qualified Biologist's observation period.

2.9.2 Active Nest Buffers. Active nest sites and protective buffer zones shall be designated as "Ecologically Sensitive Areas" where no project-related activities or personnel may enter that are protected (while occupied) during project activities with the establishment of a fence barrier or flagging surrounding the nest site. The Qualified Biologist shall determine the necessary buffer, in consultation with CDFW, to protect nesting birds based on existing site conditions, such as construction activity and line of sight, and shall increase buffers if needed to provide sufficient protection of nesting birds and their natural behaviors. Buffers shall be approved in writing by CDFW prior to the continuation of project activities.

2.10 Special Status Plant Surveys and Avoidance. For all projects with anticipated temporary or permanent impacts to vegetation and potential habitat for special status plants, a Qualified Botanist shall conduct surveys for special status plants for all projects within the appropriate blooming periods prior to commencement of project activities in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*, dated March 20, 2018. If a special status plant (or stand of special-status plants) is discovered onsite, Permittee shall notify CDFW with 24 hours. No activities with potential to impact special-status plants shall occur until CDFW is notified and provides written concurrence is required for those activities to begin.

- 2.11 Giant Garter Snake (GGS) Assessment and Avoidance. In accordance with Measure 2.5, Qualified Biologist, Biological Monitor or Construction Monitor shall be present for all routine maintenance activities occurring within one hundred (100) feet of potential habitat for GGS. "Potential habitat" is defined as marshes, streams, and wetlands, as well as agricultural wetlands, rice fields, drainage canals, and irrigation ditches within the species' range. Following the initial inspection and direction by the Qualified Biologist, a Biological Monitor or Construction Monitor, as specified for each location in Measure 2.5, will remain on-site while project activities are being conducted. If a snake species of any kind is observed at any time while project activities are being conducted, all work shall immediately halt and all equipment shall be powered off. Work shall not continue until the snake has been identified by the Qualified Biologist. If the snake has been identified to be a GGS, work shall not continue in that location until consultation with CDFW has occurred, and Permittee can demonstrate compliance with CESA to CDFW's satisfaction.
- 2.12 California Tiger Salamander (CTS) Assessment and Avoidance. If CTS have been documented to occur within reasonable dispersal distance to a project site and potential habitat is present, then Permittee shall submit a separate Notification for any activities involving ground disturbance and/or work within the wetted stream channel. "Potential habitat" is defined as breeding habitat, such as ponds and vernal pools, and/or upland habitat, such as grasslands with small mammal burrows, within the current or historic CTS range. "Reasonable dispersal distance" for this species is defined as 1.24 miles (2 km). Surveys from previous years may be used as a guide but shall not be relied upon to determine whether habitat is present. If CTS or potential habitat are discovered on site, work shall be placed on hold, and Permittee shall submit a separate notification package to CDFW, obtain a separate Streambed Alteration Agreement, and demonstrate compliance with CESA to CDFW's satisfaction before work at the site may begin.
- 2.13 California Red-Legged Frog (CRLF) Assessment and Avoidance. If potential habitat for CRLF exists at a given work site and/or CNDDDB records occur within a reasonable dispersal distance, a Qualified Biologist shall conduct a reconnaissance-level survey for CRLF within 48 hours prior to commencement of routine maintenance activities. "Potential habitat" is defined as breeding habitat, such as ponds, marshes, pools and backwaters of creeks or streams, springs, stock ponds, and lagoons, and/or upland/dispersal habitat, such as downed woody debris, leaf litter, small mammal burrows, and riparian vegetation, within the current or historic CRLF range. "Reasonable dispersal distance" for this species is defined as 1 mile (1.6 km). Surveys from previous years may be used as a guide but shall not be relied upon to determine whether habitat is present. If CRLF or potential habitat are discovered on site, work shall be placed on hold, and Permittee shall submit a separate notification package to CDFW and obtain a separate Streambed Alteration Agreement before work at the site may begin.

2.14 Western Pond Turtle (WPT) Assessment and Avoidance. If potential habitat for WPT exists at a given work site and/or CNDDDB records occur within the same watershed as a project location in terrestrial or aquatic habitat where excavation, bank stabilization, dredging, or movement of soil of any kind is scheduled to occur a Qualified Biologist shall conduct a reconnaissance-level survey for WPT within 48 hours prior to commencement of routine maintenance activities. "Potential habitat" is defined as aquatic habitat, such as ponds, lakes, reservoirs, wetlands, and deep pools in streams or rivers, and terrestrial habitat, such as basking sites (e.g., rocks or LWD, including emergent in-stream features) and loose soils or duff within 1,500 feet of a waterway, within the current or historic range of WPT. If WPT or potential habitat (including breeding habitat) are discovered on site, the following conditions shall apply:

- 2.14.1 A Qualified Biologist or Biological Monitor shall be present each day to conduct pre-construction surveys prior to initiation of project activity for all ground-disturbing activities. If no ground-disturbing activities will occur, a Biological Monitor will be present each day to ensure the potential habitat is inspected prior to the commencement of work.
- 2.14.2 If a WPT enters the project site all work shall cease immediately, and the individual(s) shall be allowed to leave the area on its own accord. If the western pond turtle does not leave on its own accord, the Qualified Biologist may move the western pond turtle to a safe area downstream of the project. All relocation events must be reported to CDFW within twenty-four (24) hours and be included in the annual project report.
- 2.14.3 No disking or pesticide application shall occur in upland or riparian areas where potential nesting habitat exists; where recorded CNDDDB occurrences of WPT populations are known to exist; where WPT may occur within a reasonable dispersal distance until surveys are performed and species absence is verified.

2.15 Western Burrowing Owl (BUOW) Assessment and Avoidance. If potential habitat for western burrowing owl exists at a given work site and/or CNDDDB records occur within a reasonable dispersal distance, a Qualified Biologist shall conduct preconstruction surveys in accordance with the March 7, 2012 CDFW Staff Report on Burrowing Owl Mitigation (available online at: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). "Potential habitat" is defined as grasslands or areas with ruderal vegetation and presence of small mammal burrows. If preconstruction surveys find active burrows, avoidance and minimization guidelines shall be developed prior to the start of construction in accordance with the March 7, 2012 CDFW memo, and through consultation with CDFW. If nests become active during construction, or western burrowing owl activity is discovered within five hundred (500) feet of the

project, work must halt immediately and CDFW must be consulted. If no BUOW are present during surveys, a Construction Monitor will be on site during all work activities.

- 2.16 San Joaquin Kit Fox (SJKF) Assessment and Avoidance. If potential habitat for SJKF exists at a given work site and/or CNDDDB records occur within a reasonable dispersal distance, a Qualified Biologist shall conduct a reconnaissance-level survey for SJKF within 48 hours prior to commencement of routine maintenance activities. "Potential habitat" is defined as grasslands and plains within the current or historic range of SJKF. "Reasonable dispersal distance" for this species is defined as 5 miles (8 km). Surveys from previous years may be used as a guide but shall not be relied upon to determine whether habitat is present. If SJKF or potential habitat are discovered on site, work shall be placed on hold, and Permittee shall submit a separate notification package to CDFW and obtain a separate Streambed Alteration Agreement before work at the site may begin. If no SJKF are present during surveys, a Construction Monitor will inspect each given work site prior to the commencement of work.
- 2.17 American Badger Assessment and Avoidance. A Qualified Biologist shall conduct a reconnaissance-level survey within 48 hours prior to commencement of routine activities. If active burrows are found, the Biological Monitor, in consultation with the Qualified Biologist, shall determine an appropriate buffer distance based on the type of work that is being conducted. A Construction Monitor will also check for active burrows before commencement of any work activities.
- 2.18 Bat Surveys. For all projects planned in potential bat roosting habitat and/or involving the modification or removal of woody vegetation with cavities or exfoliated bark, the CDFW-approved Qualified Biologist shall conduct daytime and evening emergence surveys at least **14 days** prior to initiation of construction activities. If bats are identified onsite, the biologist shall identify the species, estimated quantity present, roost type, and roost status, but shall avoid disturbing bats during surveys. Permittee or the Qualified Biologist shall notify CDFW within 24 hours if bats are found during surveys. If roosting bats are found onsite and could be impacted by project activities, the CDFW-approved Qualified Biologist shall submit a Bat Mitigation and Monitoring Plan at least **7 days** prior to the start of project activities for CDFW review and written approval. Project activities may not start until CDFW written approval has been provided to the Permittee. The Bat Mitigation and Monitoring Plan shall include: i) an assessment of all project impacts to bats, including noise disturbance during construction; ii) effective avoidance and minimization measures to protect bats; iii) and compensatory mitigation for permanent impacts to bats or their nesting/roosting habitat. Upon CDFW written approval, the Bat Mitigation and Monitoring Plan shall be considered part of this Agreement.



- 2.19 Special-Status Species Sightings or Injuries. If the Permittee encounters any species listed as Rare, Threatened or Endangered pursuant to the California Endangered Species Act (CESA) during the conduct of project activities, project activities shall be immediately suspended, and CDFW notified. Work may not re-initiate until the Permittee has consulted with CDFW and can demonstrate compliance with CESA. The Qualified Biologist and Biological Monitors shall have the authority and responsibility to communicate directly to CDFW, without having to report first to the Permittee. If special-status species are injured or otherwise harmed during project activities, CDFW reserves the right to provide additional avoidance and compensatory measures to this Agreement in the event special-status species are discovered.

*General Wildlife Protection*

- 2.20 Harassment of Animals. No project personnel or motorized equipment shall harass, herd or drive any wildlife. Harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, *but is not limited to*, breeding, feeding, or sheltering. Project personnel and equipment shall not cause displacement of wildlife into roadways or open areas without cover from aerial predators.
- 2.21 Allow Wildlife to Leave Unharmd. Permittee shall allow any wildlife encountered during the course of project activities to leave the project area unharmd.
- 2.22 Temporary Flagging, Fencing, and Barriers. Permittee shall remove all temporary flagging, fencing, and/or barriers from the project site and vicinity of the stream upon completion of project activities.
- 2.23 Open Pipes Restriction. All pipes, culverts, or similar structures that are stored at the site for one or more overnight periods shall be thoroughly inspected for wildlife by the Qualified Biologist or Biological Monitor prior to use at the project site. All hollow pipes or posts installed as part of the project and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the workday in which the installation occurs.
- 2.24 Fence and Signpost Restriction. Any fencing, signposts, or vertical poles installed temporarily or permanently throughout the course of the project shall have the top capped and/or the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife.
- 2.25 Wildlife-friendly Fencing. All new and repaired fencing shall be designed to facilitate wildlife passage to the maximum extent practicable. Wire fencing shall have a smooth top and bottom wire. Permittee shall not install any fencing material which may ensnare, impale, or otherwise harm wildlife species.

- 2.26 Open Trenches. Any open trenches, pits, or holes with a depth of larger than one (1) foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (e.g., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood, or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (e.g., deer) and small (e.g., frogs and snakes) wildlife to escape on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, the Qualified Biologist, Biological Monitor, or Construction Monitor shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord. If wildlife does not leave of its own accord consultation with CDFW is required before work can be initiated.
- 2.27 Temporary and Permanent Lighting. All temporary and permanent lighting installed as part of the project shall be fully hooded (i.e., no lateral lighting). Any illumination shall be directed to the ground and away from the stream.
- 2.28 Equipment and Vehicle Inspections. Any vehicles or heavy equipment parked near special status species habitat, as determined in Measures 2.8 through 2.15, shall be thoroughly inspected for wildlife by the Biological Monitor or Construction Monitor prior to operation.

*Sediment and Debris Removal*

- 2.29 Limitations on Debris and Sediment Removal. Annual debris and sediment removal shall conform to the following limits:
- 2.29.1 Natural Channels – not to exceed thirty (30) cubic yards per year, limited to fifty (50) linear feet per stream reach, and a cumulative annual total of five hundred (500) feet per stream (including tributaries), unless expressly requested by Permittee and authorized in writing by CDFW.
  - 2.29.2 Engineered Earthen Channels – not to exceed forty-five (45) cubic yards per year, limited to one hundred (100) linear feet per stream reach, and a cumulative annual total of five hundred (500) feet per stream (including tributaries), unless expressly requested by Permittee and authorized in writing by CDFW.
  - 2.29.3 Annual Concrete Lined Channels – not to exceed ninety (90) cubic yards per year, limited to two hundred (200) linear feet per stream reach, and a cumulative annual total of one thousand (1000) linear feet per stream (including tributaries) unless expressly requested by Permittee and

authorized in writing by CDFW.

- 2.29.4 Siltation Basins—not to exceed a cumulative annual total of 10 cubic yards.

- 2.30 Removal of Trash and Debris. Except as explicitly described in the Project Description of this Agreement, the removal of native soils, rock, gravel, vegetation, and vegetative debris from the stream bed or stream banks is prohibited. Embedded pieces of large woody debris or stumps that potentially serve as basking sites or that encourage pool formation shall be left in place if there is adequate flood flow capacity, as assessed by hydrologist or fluvial geomorphologist.
- 2.31 Removal of Construction Waste. Permittee shall remove all raw construction materials and wastes from the project site following the completion of maintenance activities. Food-contaminated wastes generated during construction shall be removed daily to avoid attracting predators to work sites. All temporary fences, barriers, and/or flagging shall be completely removed from work sites and properly disposed of upon completion of maintenance activities. Permittee or its contractors shall not dump any litter or construction debris within the riparian/stream zone.

#### *Large Woody Material*

- 2.32 Threat to In-Stream Structures. Permittee shall only modify large woody material (LWM) from streams when the accumulation of LWM poses a threat to: (1) road stability, bridges, culverts, or other in-stream structures; (2) structures such as homes; (3) project sites with a significant increase in flooding risk that would impact previously described structures; and (4) project sites with an increase in erosion risk to property and increase sediment load. Permittee shall only cut or modify the minimum amount of stream wood to reduce the hazard as directed by a hydrological engineer or fluvial geomorphologist. LWM shall only be removed when such threats cannot be addressed by modifications.
- 2.33 Minimum Two Feet Height Limit. Permittee shall limit modifications and/or removal of LWM that extends higher than two feet above the existing streambed grade, unless the LWM is immediately upstream and threatening a culvert, bridge, house, or other public structure. To preserve channel stability and prevent erosion, Permittee shall avoid removing LWM that is embedded in the bank or channel.
- 2.34 Length of LWM. When modifying log jams, Permittee shall leave trees, logs and/or stumps in the longest lengths and diameters practicable. If logs must be cut from fallen trees, Permittee shall leave as much as possible of the main trunk attached to the root ball and only cut branches that are obstructing flow.

- 2.35 Review of LWM Removal Activities. All proposed LWM removal activities shall be reviewed and approved by a Qualified Biologist and hydrological engineer or fluvial geomorphologist. Written concurrence from the Qualified Biologist and hydrological engineer or fluvial geomorphologist shall be provided with the notification of proposed activities (Measures 1.8, 4.1).

### *Vegetation Management*

- 2.36 Vegetation Removal. The disturbance or removal of vegetation shall not exceed the minimum necessary to prevent flooding. Precautions shall be taken to avoid damage to other vegetation outside the active channel by people or equipment. Woody or herbaceous plants, fallen trees, or trunks lodged in the bed or bank causing flow restrictions shall be cut off at the bed or bank invert with small hand tools (i.e., chainsaw, loppers) and removed with winch or cable equipment operated from the top of the bank. Root structures are not to be disturbed.
- 2.37 Grazing. Grazing shall only be employed if special-status plant species are not present at the work site, the animals are monitored during grazing, and the animals are removed once the underbrush is cut down.
- 2.38 Use of Heavy Equipment for Vegetation Management. Heavy equipment (e.g., backhoe, flail mower attached to skid-steer or excavator) may be used to manage invasive species on a case-by-case basis with prior written authorization from CDFW. Excavation and/or disking shall not occur within the wetted channel or in areas where pre-construction surveys and/or suitable habitat assessments conducted by a Qualified Biologist have determined nesting birds or special status species are present. Requests for heavy equipment use shall be included in the VRF (Measure 1.8.1.5). Construction Monitor will be on site for pre-inspection and post-inspection any time heavy equipment is to be used.
- 2.39 Rotary Blades. Rotary blade attachments shall only be used if pre-construction surveys and/or suitable habitat assessments conducted by a Qualified Biologist have determined no nesting birds or special status species are present. A Qualified Biologist, Biological Monitor, or Construction Monitor shall be present during rotary blade operations. The rotary blade shall not be used to remove trees or small shrubs.
- 2.40 Vegetation Disposal. Permittee shall not conduct disking, grubbing, or stock piling of vegetative debris in a manner that would cause vegetative debris to pass into the stream channel. Vegetation removed at the project site shall be placed directly into a disposal vehicle and removed from the site. Vegetation shall not be piled on the ground unless it is later transferred, piece by piece, under the direct supervision of the Qualified Biologist or Construction Monitor.

### *Maintenance of Existing Facilities*

- 2.41 Limitations on Bank and Slope Repair. This Agreement does not authorize bank or channel fill, such as placement of imported soils, rip-rap, etc., with the exception of: (1) fill required for in-kind repair or replacement of existing bank stabilization; (2) minor bank repair limited to channel reaches of less than one-hundred (100) linear feet in natural channels, engineered channels, and natural sediment bottom channels; and (3) minor bank repair limited to channel reaches of less than two-hundred (200) linear feet in any concrete lined flood control channel without a natural sediment bottom.
- 2.42 Annual Culvert Maintenance Restrictions. The installation of new culverts or replacement culverts of increased length is not permitted under this Agreement. Permittee may repair small structures, replace fill at culverts, replace damaged culverts, or conduct other small, in-kind structural repairs. All culverts shall retain a natural flowline as close to pre-project conditions as feasible and natural sediment bottom shall be achieved through burying or installation of a recessed bottom. Culvert repair and in-kind replacement shall be limited to dry or low flow periods. If water is present, an appropriate flow diversion system shall be installed prior to initiation of activities. Culvert repair and in-kind replacement in fish bearing streams or of culverts greater than three (3) feet diameter **shall not be** permitted under this Agreement. Any in-kind replacement structure or repair that may impede fish passage is not permitted under this Agreement.

### *Water Diversion and Associated Fish Salvage*

- 2.43 Flow Diversion Systems. Flow diversion systems shall be installed prior to the initiation of project activity if work will occur in a wetted channel and will result in earthmoving, dislodging of sediment, or disturbance of channel substrate. Flow diversion plans shall be submitted to CDFW for approval prior to use. If pumps are to be used, the intake shall be screened as specified in CDFW's Fish Screening Criteria: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22672>. Flow diversions shall be removed from the stream no more than ten (10) days after installation and normal flow shall be immediately restored. Extensions may be granted upon request from CDFW.
- 2.44 Dewatering. Sediment-laden water from dewatering shall be held in a settling container or discharged in an upland location where it will not drain directly into surface water bodies.
- 2.45 Coffer Dams. Prior to the start of project activities within a wetted stream channel, the Permittee shall divert flowing channel water around or through the project site and project activities shall be isolated from the stream flows. To isolate the project site, water-tight coffer dams shall be constructed upstream and downstream, and

water diverted, through a suitably sized pipe, from upstream of the upstream coffer dam and discharge downstream of the downstream coffer dam. Cofferdams and the stream diversion systems shall remain in place and functional throughout the construction period. Cofferdams or channel diversions that fail for any reason shall be repaired immediately.

- 2.46 Cofferdam Material. Permittee shall construct coffer dams with clean river run gravel or sandbags and may be sealed with sheet plastic. Cofferdams shall be constructed of a non-erodible material that does not contain soil or fine sediment. Upon completion of a project, sandbags and any sheet plastic shall be removed from the stream. Clean river run gravel may be left in the stream channel, provided it does not impede stream flow or fish passage, and conforms to natural channel morphology without significant disturbance to natural substrate.
- 2.47 Pump Screens. The suction end of intake pipes shall be fitted with fish screens meeting CDFW criteria to prevent entrainment or impingement of small fish. CDFW fish screen criteria can be found in the California Salmonid Stream Restoration Manual's Appendix S available online at: <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>. Any turbid water pumped from the work site itself to maintain it in a dewatered state shall be disposed of in an upland location where it will not drain directly into any stream channel.
- 2.48 Daily Cofferdam Checks for Stranded Aquatic Life. The Qualified Biologist shall check daily for stranded aquatic life as the water level in the dewatering area drops. If the cofferdam is left in place overnight or longer, then the Biological Monitor shall carefully inspect the dewatered area every morning prior to the start of project activities. For non-listed fish, the Biological Monitor shall relocate fish outside of the dewatering area immediately upon their discovery. If a salmonid is found within the dewatering area the Biological Monitor shall immediately contact the Qualified Biologist for relocation of the salmonid. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This measure does not authorize the take or disturbance of any State or federally listed species.
- 2.49 Cofferdam Bypass Flows. When bypassing stream flow around the project site, stream flows downstream of the dewatered area shall be maintained at the same rate and volume as unimpeded flows upstream at all times.
- 2.50 Cofferdams and Work Area Seepage. The project site shall be periodically pumped dry of seepage. Permittee shall place pumps in flat areas, away from the stream channel. Pumps shall be secured by tying off to a tree or staked in place to prevent movement by vibration. Pump intakes shall be covered with 0.125-inch

mesh to prevent entrainment of fish or amphibians that failed to be removed. Pump intakes shall be periodically checked for impingement of fish or amphibians that shall be relocated according to the approved measures outlined for each species below.

- 2.51 Disinfect Fish Salvage and Dewatering Equipment Prior to Entry into Watercourses. To prevent spread of invasive aquatics and diseases, equipment to be used in watercourses including, but not limited to, boots, waders, hand tools and nets must be decontaminated with a minimum 5 percent chlorine solution for 2 minutes prior to entry into a watercourse. In addition, if a piece of equipment has been exposed or is suspected to have been exposed to areas harboring New Zealand mud snails then that equipment must either be dried out for two weeks, frozen for 48 hours, or placed in 55 degrees Celsius water for 5 minutes.
- 2.52 Relocation of Fish and Amphibians. Prior to construction, the Qualified Biologist shall capture and relocate native fish and native amphibian species. Measures shall be taken to avoid harm and mortality resulting from fish and amphibian relocation activities, as follows:
- 2.52.1 Relocated Fish Records. Relocated fish and amphibians shall be moved to the nearest appropriate site outside of the project site. A record shall be maintained of all relocated fish. The record shall include the date of capture and relocation, the method of capture, the location of the relocation site in relation to the project site, and the number and species of fish captured and relocated. The record shall be provided to CDFW within two weeks of the completion of the seasonal work period or project activities, whichever comes first.
- 2.52.2 Release Locations Criteria. Prior to capturing fish and amphibians, the most appropriate release location(s) shall be determined, using the following criteria: water temperature shall be similar as the capture location; there shall be ample habitat for the captured fish; relocation areas must be in proximity to the capture site, contain suitable habitat, not be affected by project activities, and be free of exotic predatory species (i.e. bullfrogs, crayfish) to the best of the qualified biologist's knowledge. In watersheds with known populations of exotic predatory species, the release location shall not pose a greater threat of predation than baseline conditions of the capture location. In the rare case that amphibian egg masses are found after July 1, the Qualified Biologist shall make every attempt to wait until the egg masses hatch to transport them. There shall be a low likelihood for the fish to re-enter the work site or become impinged on exclusion net or screen.
- 2.52.3 Wet Hands and Nets. Handling of fish and amphibians within the project

site shall be minimized. However, when handling is necessary, the Qualified Biologist shall always wet hands or nets prior to touching fish and amphibians.

- 2.52.4 Proper Holding Technique. Holding containers shall be sized such that adult fish will fit without touching the sides. The Qualified Biologist shall temporarily hold fish and amphibians in cool, shaded, aerated water in a flow-through live car. The Qualified Biologist shall protect fish and amphibians from jostling and noise and shall not remove fish from this container until time of release.
- 2.52.5 Water Temperatures and Water Changes. The Qualified Biologist shall measure air and water temperatures periodically. A thermometer shall be placed in holding containers and, if necessary, periodically conduct partial water changes to maintain a stable water temperature. If water temperature reaches or exceeds 18 °C, fish shall be released and fish relocation operations ceased unless otherwise authorized in writing by CDFW.
- 2.52.6 No Overcrowding. Overcrowding in containers shall be avoided by having at least two containers and segregating young-of-year (YOY) fish and amphibians from larger age-classes to avoid predation. Larger amphibians shall be placed in the container with larger fish. If fish are abundant, the capturing of fish and amphibians shall cease periodically, and they shall be released at the predetermined locations.
- 2.53 Timing of Initial Fish Relocation. If feasible, the Qualified Biologist shall perform initial fish and amphibian relocation efforts several days prior to the start of construction. This provides the Qualified Biologist an opportunity to return to the work area and perform additional electrofishing or seining passes immediately prior to construction.
- 2.54 Relocate Fish and Amphibians during Cool Temperatures. The Qualified Biologist shall conduct relocation activities in the morning when the temperatures are cooler.
- 2.55 Seining Restrictions. Seine mesh shall be adequately sized to ensure fish are not gilled during capture. There shall be a minimum number of three passes with the seine to ensure a maximum capture probability of fish within the proposed area to be dewatered.
- 2.56 Report Mortalities to CDFW Immediately. If any fish species are found dead or injured during fish relocation activities or other construction-related actions, the Qualified Biologist shall provide written notification within 24 hours to CDFW by



writing to the contact indicated in this Agreement (see "Contact Information") with reference to Notification Number 1600-2021-0005-R3. The purpose of the contact with CDFW is to review the activities resulting in take and to determine if additional protective measures are required.

- 2.57 Restore Natural Flows. Permittee shall restore natural flows to the effected channel immediately upon completion of in-channel project activities.

*Toxic and Hazardous Materials*

- 2.58 Storage and Handling of Hazardous Materials. Any hazardous or toxic materials that could be deleterious to aquatic life shall be contained in watertight containers or removed from the project site. Such materials include, but are not limited to, debris soil, silt, bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, paint or other coating material, and oil or other petroleum products. These materials shall be prevented from contaminating the soil and/or entering the stream. Any such materials, placed within or where they may enter stream, by Permittee or any party working under contract, or with permission of the Permittee, shall be removed immediately.

- 2.59 Containment of Concrete Leachate. Containment of concrete leachate shall adhere to the following best management practices:

- 2.59.1 Any and all concrete surfaces that may come in direct contact with channel flows shall be poured thirty (30) days prior to the authorized work period final date. Permittee shall notify CDFW fourteen (14) days prior to the final date of allowed work if work is to exceed that final date.
- 2.59.2 Water that has come in contact with uncured concrete or other cement products shall not be allowed to enter the mainstream channel until the pH of the water is between 6.5 and 8.0 pH units. Water shall be diverted around uncured concrete structures, and the areas around poured concrete shall be dewatered.
- 2.59.3 Unsealed structures shall be allowed to cure (dry) for at least twenty-eight (28) days before flows are reintroduced.
- 2.59.4 To shorten the curing period, Permittee may use a non-toxic sealant designed for use in aquatic environments. Prior to use, Permittee shall submit the product material safety data sheet, including information about environmental toxicity, to CDFW for review and approval. If a sealant is to be applied, concrete structures shall be allowed to cure for at least seven (7) days prior to application and for an additional (three) 3

days following application of the sealant before flows are reintroduced.

- 2.59.5 Concrete curing compounds shall not be used within twenty-five (25) feet of the stream.
- 2.59.6 Wash-down water from concrete delivery trucks, concrete pumping equipment, and other tools and equipment shall not be allowed to enter the stream channel and should be removed from the site for treatment following work. No dry concrete shall be placed on the banks or in a location where it could be carried into the channel by wind or runoff.

- 2.60 Spill of Material Deleterious to Fish and Wildlife. Permittee and all contractors shall be subject to the water pollution regulations found in FGC Sections 5650 and 12015. In the event of a hazardous materials spill into the stream (e.g., grout, epoxy, etc.), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling 1-800-852-7550 and immediately provide written notification to CDFW by email to the contact indicated in this Agreement (see "Contact Information").

Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately deliver them to CDFW.

Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation, and compensatory mitigation for the harm caused to fish, wildlife, and the habitats on which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation, and compensatory mitigation costs. Spill of materials to waters of the State that are deleterious to fish and wildlife are in violation of Fish and Game Code Section 5650 et. Seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.

### *Erosion and Sediment Control*

- 2.61 Erosion Control. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream. All exposed soils within the work area shall be stabilized immediately following the completion of earthmoving activities to prevent erosion into the stream. Erosion control methods, such as coir or other natural fabric, silt fences, straw hay bales, water check bars, and broadcasted straw shall be used. Erosion control devices shall be monitored during and after each storm event for effectiveness. Modifications, repairs, and improvements to erosion control devices shall be made as needed to protect water quality.

- 2.62 No New Project Phase without Erosion Control. Installation of erosion control devices shall be performed under the direction of a qualified or Certified Erosion Control Specialist. No phase of the project may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a rain event if that construction phase may cause the introduction of sediments into a stream. Erosion control measures shall be inspected frequently to minimize failure and conduct any necessary repairs. All non-structural related and non-biodegradable erosion control measures shall be removed from the project site upon cessation of construction activities.
- 2.63 Stabilize Exposed Areas. Permittee shall stabilize all exposed/disturbed areas within the project site to the greatest extent possible to reduce erosion potential, both during and following construction. Erosion control measures, such as, silt fences, straw hay bales, gravel or rock-lined ditches, water check bars, and broadcasted straw shall be used wherever silt-laden water has the potential to leave the work site and discharge into a stream. Erosion control measures shall be monitored during and after each storm event. Modifications, repairs and improvements to erosion control measures shall be made whenever they are needed.
- 2.64 Location of Spoil Sites. Spoil sites shall not be located where they may be washed back into the stream or within any special-status species habitat throughout a project's boundaries.
- 2.65 Cover Spoil Piles. Permittee shall have readily available natural fiber filter fabric or burlap to cover the exposed spoil piles and exposed areas in order to prevent loose soil from moving into the stream. These covering materials shall be applied when winds are predicted to reach 7 miles per hour or greater, and/or it is evident rainy conditions threaten to erode loose soils into the stream.
- 2.66 Monofilament. Permittee shall not use erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material. Acceptable substitutes include coconut coir matting or similar.
- 2.67 Storm Event Inspection. After any storm event, Permittee shall inspect all sites scheduled to begin or continue construction within the next 72 hours. Corrective action for erosion and sedimentation shall be taken as needed.

#### *Equipment and Vehicles*

- 2.68 Equipment in Stream. No equipment shall be operated from within wetted portions of natural or engineered streams or channels including but not limited to ponded,

flowing, or wetland areas at any time. Equipment may be operated from above the top of the bank as specified in this Agreement. Access into cement lined channels by equipment may be permitted upon approval from CDFW.

- 2.69 Staging Areas and Equipment. Staging areas shall be located in a dry upland location, fifty (50) feet or more from above the top of bank proper measures shall be installed to avoid runoff into water systems. Staging areas shall be within a paved or gravel-lined site, if feasible. Vegetation disturbance shall be limited to the immediate work footprint and a single access pathway to project action areas. This measure does not apply to project activities conducted at locations directly along access roads less than fifty (50) feet from the top of bank. Prior to the entry of any vehicle or equipment into the project area including the staging site it shall be washed and cleaned of all biological material at an off-site facility. Any equipment or vehicles driven and/or operated in proximity of the stream shall be maintained in good working order to prevent the release of contaminants that if introduced to water could be deleterious to aquatic life, wildlife, or riparian habitat. If a vehicle is found to be leaking fluids of any kind, it shall be taken to an off-site location immediately. Vehicles shall be moved away from the stream prior to refueling and lubrication. A Construction Monitor will inspect areas and vehicles before commencement of work and entry to access roads.
- 2.70 Decontamination. Any equipment that will contact the stream water during project activities shall be decontaminated prior to arriving on the project site, after the project is finished, and any time project equipment leaves and returns to the site to prevent the spread of aquatic diseases and invasive aquatic species to other waterways. Workers shall also decontaminate waders, boots, and other clothing that will come in direct contact with the water prior to arriving on the project site, after the project is finished, and any time work apparel is used off-site and is to be used on the project site again. Decontamination of clothing and equipment shall be done through one or more of the following methods:
- 2.70.1 Drying equipment in an upland location following last aquatic use. If average daytime temperatures exceed 80 F, drying times shall be at least 7 days. If average daytime temperatures are below 80 F, drying times shall be at least 30 days.
  - 2.70.2 Scalding water wash (at least 140 F) with varying high and low-pressure spray to dislodge pathogens, vegetation, and contaminated sediment.
  - 2.70.3 Freezing at a temperature of less than 32 F for more than 72 hours.
  - 2.70.4 Soaking in a CDFW-approved disinfectant solution for at least 2 minutes (or longer, depending on the disinfectant used). To avoid harm to non-target species, disinfected clothing and equipment shall be thoroughly

rinsed in a water bath before entering the stream.

### **3. Remedial and Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 **Tree Replacement.** All trees removed or pruned to 1/3 or less of their baseline canopy cover as a result of proposed work activities or branches or trunks between 4- and 12-inches in diameter at breast height (DBH) removed shall be replaced, at minimum, with an in-kind ratio (mitigation amount as compared to removed amount) of 6:1 for oaks and 3:1 for other native species. Non-native trees shall be replaced at a 2:1 ratio with native species. Fan palm individuals removed will be replaced at a 1:1 ratio with native species. Replacement trees shall consist of 5-gallon saplings, stakes, or other suitable nursery stock and shall be native species adapted to the lighting, soil and hydrological conditions at the replanting site. If replanting within the work area is unfeasible due to slope steepness or other physical constraints, replacement trees may be planted at an alternate location within the same watershed. Permittee shall provide CDFW with a Tree Compensatory Mitigation Plan prior to complete removal of trees or removal of branches or trunks greater than 12-inches DBH. The Tree Compensatory Mitigation Plan shall include: (1) a detailed description of baseline community composition prior to the initiation of project activities; (2) photos of the site at fixed locations demonstrating baseline conditions; (3) planting palette, including size and species of plants, timing of planting efforts, and supportive infrastructure (irrigation, support stakes, etc.); (4) monitoring methods and timing; (5) quantifiable and enforceable mitigation success criteria; and (6) a discussion of how mitigation shall be managed to support ecosystem function and process throughout the monitoring period and once established. Tree removal and project activities shall not commence without CDFW written approval of the Tree Compensatory Mitigation Plan.

3.2 **Revegetation and Remediation.** Areas that have become either barren of vegetation or where ground disturbance has occurred shall be re-vegetated with native plant species consistent with the vegetative composition immediately up- and downstream of the Project site(s). To ensure a successful re-vegetation effort, on-site plantings shall meet the following success criteria:

3.2.1 Baseline conditions shall be quantified by the Qualified Biologist prior to project activities. The baseline narrative and representative photographs shall be submitted with the biological surveys for each project site (see Measure 4.3, below). Baseline conditions focus on community function, including relative cover, composition of species or vegetation type (e.g., grasses, forbs, shrubs), and species richness.

- 3.2.2 All plantings shall be selected and implemented to restore vegetative community function to baseline (i.e., relative cover, composition, and species richness). Remediation plantings shall achieve at least 75% of baseline community function within two years of installation. If mitigation plantings are not meeting these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements.
- 3.2.3 Vegetation cover shall consist of no new invasive plant species rated as "high" by the Cal-IPC at the end of one year. Vegetation cover of extant invasive species on-site shall not be greater than 10% above baseline conditions.
- 3.2.4 Replacement plants shall be monitored with the same survival and growth requirements for five years after planting. Revegetation monitoring shall be conducted annually for a period of two (2) years to determine whether these goals have been met. If the survival and/or cover requirements are not projected to meet these goals, based on annual monitoring, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice(s) that shall achieve these requirements.
- 3.2.5 If trees or plants purchased for re-vegetation are hosts or associated hosts of sudden oak death (*Phytophthora ramorum*; refer to list of hosts at: <http://www.suddenoakdeath.org/diagnosis-and-management/hosts-and-symptoms>) and were grown within a county that is regulated under 7 Code of Federal Regulations (CFR) 301.92, the source nursery shall be in compliance with USDA quarantine regulations. Permittee shall view, and if possible, obtain a copy of the nursery's certificate of annual inspection certifying that the plant stock is free of *Phytophthora ramorum*. If the nursery cannot provide compliance with USDA quarantine regulations pertaining to sudden oak death, the nursery shall not be used as a source for plant material, soils or other materials that could transmit the disease organism. Permittee and all contractors shall follow sanitation protocol specified in the *Sanitation Guidelines for Professional Crews* issued by the California Oak Mortality Task Force (<http://www.suddenoakdeath.org/pdf/Professional%20sanitation%20guide.pdf>) prior to entering, during construction, and prior to leaving the site. If the project site is within 5 miles of a confirmed sudden oak death infestation (refer to <http://www.oakmapper.org/> or contact the Contra Costa Agricultural Commissioner's Office at: (925) 646-5250), a discussion of

sudden oak death shall be included in the pre-construction training.

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 4.1 Notification of Proposed Activities. Beginning on January 1st and every three months thereafter, Permittee shall provide CDFW Bay Delta Region with the VRFs for proposed routine maintenance activities to be conducted in the upcoming quarter. Notification for winter activities (November 30 to April 15) may be sent on an as-needed basis, provided that notification is given at least two weeks prior to commencement of work. Urgent debris removal activities (i.e., rainy season activities needed to minimize risk of flooding) may be submitted for CDFW approval on discovery at least two business days prior to the commencement of activities. Notification reports shall include, at minimum, all information detailed in Measure 1.8.
- 4.2 Resumes for Qualified Biologists and Biological Monitors. Permittee shall submit resumes of all potential Qualified Biologists and Biological Monitors to CDFW for approval at least **30 days** prior to the initiation of pre-construction surveys. Resumes shall include educational background, experience with focal species and description of experience with each focal species (e.g., tagging, handling, observational surveys, electrofishing, relocation, auditory surveys, etc.), including number of hours/years of experience per species, trainings/workshops, and certificates or related credentials. Include experience with different life stages of a species when applicable. Pre-construction surveys and project implementation shall not commence until the Qualified Biologist and Biological Monitor(s) have been approved by CDFW.
- 4.3 Biological Surveys. The results of all biological surveys conducted shall be emailed to the contact indicated in this Agreement (see "Contact Information") prior to commencement of work, referencing Notification 1600-2021-0005-R3. Permittee is encouraged to combine survey results for multiple sites and multiple species into a single document.
- 4.4 CNDDDB Observations. The Qualified Biologist shall submit all observations of special status species to CDFW's California Natural Diversity Database (CNDDDB) at <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data> within 60 calendar days of the observation and the Qualified Biologist shall include copies of the submitted forms with the Annual Report of Completed Projects (Measure 4.5.3). "Special status species" shall be defined as any species listed as threatened or endangered under the federal or California Endangered Species Acts, as well as any species listed in the table of Covered Species on page 3 of this Agreement.

- 4.5 Annual Reports of Completed Projects. Permittee shall provide CDFW Bay Delta Region written notification of maintenance projects completed on an annual basis. Annual reports shall include:
- 4.5.1 An accounting of the total number of routine maintenance projects undertaken by the Permittee during the prior calendar year (which should equal the total number of VRF's submitted to CDFW).
  - 4.5.2 A summary of the work completed during the previous calendar year, including the status of any required restoration (survival, percent cover, and height of both tree and shrub species, number by species of plants replaced, an overview of the re-vegetation effort, and the method used to assess these parameters), compensatory mitigation and/or monitoring.
  - 4.5.3 CNDDDB observation forms from the previous calendar year.
  - 4.5.4 Total area of permanent and temporary project impacts per site; and
  - 4.5.5 The appropriate fee from the most current CDFW Streambed Alteration Agreement Fee Schedule (<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA#55227743-fees>) for work completed under this Agreement based upon the number of projects completed in the reporting period.

Permittee shall provide the annual report by March 1 of each year for the previous calendar year's activities. CDFW may terminate this Agreement if reports and fees are not submitted by these deadlines.

## CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

### To Permittee:

~~John Samuelson~~  
City of Antioch—Public Works Department  
PO Box 5007  
Antioch, CA 94531  
~~(925) 779-6950~~  
~~jsamuelson@antiochca.com~~

### City of Antioch Primary Contact:



~~Jeff Cook~~  
City of Antioch—Public Works Department  
PO Box 5007  
Antioch, CA 94531

~~925-779-8862~~  
~~jeff@antioch.ca.gov~~

To CDFW:

Department of Fish and Wildlife  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534

Attn: Lake and Streambed Alteration Program – ~~Sabrina Dunn~~  
Notification #1600-2021-0005-R3

~~sabrina.dunn@wildlife.ca.gov~~ or ~~skid@wildlife.ca.gov~~

## LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with, the project. The decision to proceed with the project is Permittee's alone.

## SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

## **TERM**

This Agreement shall expire on December 31, 2029, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF ANTIOCH AND  
[NAME OF CONSULTANT]  
FOR ON-CALL LANDSCAPE ARCHITECTURAL SERVICES**

THIS AGREEMENT ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ ("**Effective Date**") by and between the City of Antioch, a municipal Corporation with its principle place of business at 200 H Street, Antioch, CA 94509 ("**City**") and \_\_\_\_\_ with its principle place of business at \_\_\_\_\_ ("**Consultant**"). City and Consultant individually are sometimes referred to herein as "**Party**" and collectively as "**Parties.**"

**SECTION 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to provide to City the services described in the Scope of Work attached as Exhibit A attached hereto and incorporated herein at the time and place and in the manner specified therein ("**Services**"). In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, the date of completion specified in Exhibit A, and Consultant shall complete the Services described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the Services required by this Agreement shall not affect the City's right to terminate the Agreement, under Section 8.

**1.2 Standard of Performance.** Consultant represents that it is experienced in providing these services to public clients and is familiar with the plans and needs of City. Consultant shall perform all Services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession.

**1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

**1.4 Time.** Consultant shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

**SECTION 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \_\_\_\_\_, notwithstanding any contrary indications that may be contained in Consultant's proposal, for Services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for Services rendered pursuant to this Agreement at the time and in the manner set forth below. The payments specified below shall be the only payments from City to Consultant for Services rendered pursuant to this Agreement.

Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

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

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for Services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services; and,
- The Consultant's signature.

**2.2 Payment Schedule.**

**2.2.1** City shall make incremental payments, based on invoices received, [according to the payment schedule attached as Exhibit B and incorporated herein], for Services satisfactorily performed, in accordance with the requirements of this Agreement, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements of Section 2.1 to pay Consultant.

**2.3 Total Payment.** City shall pay for the Services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering Services pursuant to this Agreement, unless expressly provided for in Section 2.5.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

**2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the fee schedule in Exhibit B.

**2.5 Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed [REDACTED] (\$ [REDACTED]). Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

Reimbursable Expenses are:  
[REDACTED]

**2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

**2.7 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until Consultant receives authorization to proceed from the Contract Administrator.

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

**SECTION 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Insurers shall have an AM Best rating of no less than A:VII unless otherwise accepted by the City in writing:

**4.1 Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Consultant’s services include work within 50 feet of a railroad right of way, the Consultant shall have removed any exclusion on their liability policy limiting coverage for work near a railroad, or shall provide a Railroad Protective Liability policy in favor of the City. Limits for such coverage shall be no less than \$5,000,000.

**4.2 Automobile Liability Insurance.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

**4.3 Workers’ Compensation Insurance.** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

**4.4 Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

**4.5 Other Insurance Provisions.** Unless otherwise specified below, all insurance policies are to contain, or be endorsed to contain, the following provisions:

**4.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. CGL coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). This requirement shall only apply to the CGL and Automobile Liability Insurance policies specified above.

**4.5.2 Primary Coverage.** For any claims related to this contract, the Consultant’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it. This requirement shall only apply to the CGL and Automobile Liability Insurance policies specified above.

**4.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

**4.5.4 Waiver of Subrogation.** Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. This requirement shall only apply to the CGL, Automobile Liability and Workers’ Compensation/Employer’s Liability Insurance policies specified above.

**4.5.5** *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**4.5.6** *Claims made policies.* If any of the required policies provide claims-made coverage:

**4.5.6.1** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

**4.5.6.2** Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

**4.5.6.3** If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contractwork.

**4.6** **Certificate of Insurance and Endorsements.** Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**4.7** **Subcontractors.** Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

**4.8** **Higher Limits.** If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**4.9** **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

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

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due to Consultant under the Agreement;



- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or,
- Terminate this Agreement.

## **SECTION 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

**5.1** To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably acceptable to City), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

**5.1.1** Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

**5.2** By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

## **SECTION 6. STATUS OF CONSULTANT.**

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

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

## **SECTION 7. LEGAL REQUIREMENTS.**

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

**7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the Services.

**7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

**7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

**7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, sexual orientation or any other legally protected status, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any Services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

**7.6 California Labor Code Requirements.** Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not

apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the full term of this Agreement and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

## **SECTION 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement only for cause upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

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

**8.2 Extension.** City may, in their sole and exclusive discretion, extend the end date of the term of this Agreement beyond that provided for in Section 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

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

**8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of

Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

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

**8.6.1** Immediately terminate the Agreement;

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

**8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant in which case the City may charge Consultant the difference between the cost to have a different consultant complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

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

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

**9.2 Confidentiality.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be kept confidential by Consultant. Such materials shall not, without the prior written permission of City, be used by Consultant for any purpose other than the performance of this Agreement nor shall such materials be disclosed publicly. Nothing furnished to Consultant which is generally known, shall be deemed confidential. Consultant shall not use the City's name or logo or photographs pertaining to the Services under this Agreement in any publication without the prior written consent of the City.

**9.3 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to

charges for Services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant..

**9.4 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds Ten Thousand Dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

**9.5 Intellectual Property.** The City shall have and retain all right, title and interest, including copyright, patent, trade secret or other proprietary rights in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents and any other works of authorship fixed in any tangible medium or expression, including but not limited to physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement. Consultant further grants to City a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional or supplemental work created under this Agreement.

## **SECTION 10. MISCELLANEOUS PROVISIONS.**

**10.1 Venue.** In the event either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

**10.2 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**10.3 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.4 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

**10.5 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

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

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.7 Inconsistent Terms.** If the terms or provisions of this Agreement conflict with or are inconsistent with any term or provision of any Exhibit attached hereto, then the terms and provisions of this Agreement shall prevail.

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

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

**10.10 Notices.** Any written notice to Consultant shall be sent to:


Any written notice to City shall be sent to:

Public Works  
City of Antioch  
P. O. Box 5007  
Antioch, CA 94531-5007

City of Antioch  
P. O. Box 5007  
Antioch, CA 94531-5007  
Attn: City Attorney

**10.11 Integration.** This Agreement, including all exhibits and other attachments, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**CITY:**

CITY OF ANTIOCH

\_\_\_\_\_  
Rowland E. Bernal, Jr. City Manager

Attest:

\_\_\_\_\_  
Elizabeth Householder, City Clerk

Approved as to Form:

\_\_\_\_\_  
Thomas Lloyd Smith, City Attorney

*[Two signatures are required for a corporation or one signature with the corporate bylaws indicating that one person can sign on behalf of the corporation]*

**CONSULTANT:**

**[NAME OF CONSULTANT]**

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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