



American Rivers
RIVERS CONNECT US®

REQUEST FOR PROPOSALS FOR Three Creeks Parkway Restoration Project In Brentwood, California

Landscaping Services

KEY PROPOSAL INFORMATION

- PROPOSALS are due by 5:00 pm (PDT), Tuesday, June 30, 2020, sent via email to 3Creeks@americanrivers.org.
- Optional pre-proposal meeting on-line at 12:00 noon (PDT) Wednesday, June 10, 2020
- Questions must be emailed to 3Creeks@americanrivers.org by 5:00 pm (PDT) on Monday, June 15, 2020. If necessary, responses will be included in an addendum.
- Published construction project information (answers to questions, addenda and winning proposal selection) posted at <https://www.americanrivers.org/3cpproject/>.

Engineer's Estimate:	Base Proposal:	\$823,550
	Alternate 1:	\$ 10,200
	Alternate 2:	\$137,575
	Alternate 3:	\$ 75,800
	Alternate 4:	\$ 30,000
	Alternate 5:	\$ 71,000
	Alternate 6:	\$ N/A
	Alternate 7:	\$322,125
	Alternate 8:	\$162,000

AMERICAN RIVERS | CALIFORNIA CENTRAL VALLEY RIVER RESTORATION PROGRAM

2150 Allston Way | Suite 320 | Berkeley, CA 94704 | 510-809-8010 | AmericanRivers.org

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2 GENERAL INFORMATION

2.1 INTRODUCTION

Through this Request for Proposals, American Rivers seeks Proposals from qualified contractors to execute planting, irrigation, weed control, and maintenance for the Three Creeks Parkway Restoration Project (Project) at Marsh Creek starting in November/December 2020 and running through April 2023. The most qualified Applicant will be selected based on the Scoring Criteria provided in Section 3.2. The Proposal budget of the selected Applicant will be applied beginning in November/December 2020; the proposed budget must remain valid through Project completion in 2023. However, American Rivers reserves the right to negotiate a final contract amount with the selected Applicant in order to best meet the needs of the Project.

The creek restoration Project is designed to provide multiple benefits, including improved water quality in Marsh Creek and the Sacramento-San Joaquin Delta, habitat for a diversity of avian, fish, reptile and mammalian species, and recreational opportunities for the growing community of the City of Brentwood. These improvements will be realized by widening 4,000 linear feet of the Marsh Creek flood control channel, creating a floodplain along the low flow channel, and removing non-native and restoring native riparian and upland vegetation in a 13.5-acre Project Site. The Project will also bring much needed shade to the Marsh Creek Regional Trail, as well as a pedestrian undercrossing below Central Avenue to reduce traffic congestion and improve safety.

The Project is located within the City of Brentwood, approximately 5.7 miles upstream of the creek's outlet to Big Break in the Sacramento – San Joaquin Delta and roughly halfway between the Delta and the base of the creek's headwaters on the eastern flanks of Mount Diablo. American Rivers and the Contra Costa County Flood Control and Water Conservation District (District) are partnering to design, execute, and maintain this Project. Other Project partners include the East Bay Regional Park District, East Contra Costa County Habitat Conservancy, Friends of Marsh Creek Watershed, Earth Team, and the City of Brentwood. The District is overseeing implementation of the civil aspect of the project, while American Rivers is overseeing project landscaping. American Rivers has received funding from multiple sources to complete the landscaping aspect of this project, including from Proposition 1 through the Sacramento - San Joaquin Delta Conservancy and the California State Coastal Conservancy, the Environmental Protection Agency San Francisco Bay Water Quality Improvement Fund, and from Proposition 84 through the Department of Water Resources Urban Stream Restoration Program and the California Natural Resources Agency River Parkways Program. Civil implementation of the Project will be completed by November/December 2020. Landscape implementation of the Project Site will occur from approximately November/December 2020 through April 2023.

In the 1960s, the Soil Conservation Service channelized six miles of Marsh Creek, destroying hundreds of acres of floodplain wetlands and vegetation. The creek now serves as the stormwater drain for the growing cities of Antioch, Brentwood, and Oakley. It also receives tailwater from agricultural fields and treated wastewater effluent. Since 2001, the project team has made measurable progress restoring

Marsh Creek and engaging the local community. Unfortunately, most of the lower six miles of Marsh Creek remain an exposed, trapezoidal channel with steep banks vegetated with non-native grasses and no woody riparian cover or shade. Over the next three years, this Project will employ nature-based solutions to improve the flood control channel to achieve the following near-term and long-term measurable outcomes: Restore floodplain and riparian vegetation along 4,000 linear feet; slow floodwaters, filter pollutants, and provide shade to maintain lower water temperatures to improve water quality; improve riparian habitat and provide a habitat corridor for native species; and deeply engage partners to inspire further action in the watershed. The Project is part of a broader 50-Year Plan by the District to convert flood control channels to natural creeks that continue to provide flood protection (<https://www.contracosta.ca.gov/5745/Documents-and-Standards>).

2.2 DEFINITIONS

Terms used in these Instructions to Applicants have the meanings indicated below. Further definitions are in the General Conditions and Supplementary Conditions.

As-Built Drawings – Drawings submitted by Contractor upon completion of the implementation project detailing the location of all plants and objects included in the Design Drawings as they were implemented on the ground.

Design Project Manager – Erik Stromberg, Restoration Design Group

Owner – American Rivers, Inc.

Owner's Representative/Resident Project Manager – The authorized representative of Owner or Project Manager who is assigned to the Project site or any part thereof. See also Resident Project Manager.

Project Manager – Amy Merrill, Director of California Central Valley Restoration at American Rivers

Primary Landowner and Local Partner – Contra Costa County Flood Control & Water Conservation District (District)

Project Management Team – Individuals leading management of the landscape implementation for the Three Creeks Parkway Restoration Project: Amy Merrill (American Rivers), Sarah Puckett (Consultant), Erik Stromberg (Restoration Design Group)

Project Partners – Collaborating entities involved with the Project who also may be carrying out tasks and responsibilities for its success. See Section 4.2 Project Partners Roles and Responsibilities

Site – Location of the Three Creeks Restoration Project at Marsh Creek in Brentwood, California

State – California

Work – Landscape implementation (see attached Designs and Specifications)

3 INSTRUCTIONS TO APPLICANTS

3.1 COPIES OF PROPOSAL DOCUMENTS

Copies of all Proposal Documents can be downloaded at <https://www.americanrivers.org/3cpproject/>

Complete sets of the Proposal Documents must be used in preparing Proposals; neither Owner nor Design Project Manager assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents.

3.2 LICENSING REQUIREMENTS FOR CONTRACTORS

Applicants and their proposed subcontractors shall hold such licenses as may be required by the laws of the State for the performance of the work specified in the Contract Documents, including a California Qualified Applicator License, C-27 Landscape Contractor license or its equivalent for the type of work called for under this Contract. Any Proposal submitted to the Owner by a Contractor who is not licensed in accordance with the California Contractors State License Law, Business and Professions Code Section 7000 et seq., or in violation of Business and Professions Code Section 7028.15, shall be considered non-responsive and will be rejected by the Owner.

3.3 APPLICANT'S UNDERSTANDING

Each Applicant must inform itself of the conditions relating to the execution of the work, and it is assumed that Applicant will inspect the site and to thoroughly become familiar with the site and of all the Contract Documents. Failure to do so will not relieve the successful Applicant of its obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. The Applicant's attention is called to the General Conditions and the Surface and Subsurface Conditions section of the Technical Specifications regarding Applicant's obligation to verify for itself and to its complete satisfaction all information concerning site and subsurface conditions. Each Applicant shall inform itself of, and the Applicant awarded a Contract shall comply with, Federal, State and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.

3.4 STATE AND LOCAL SALES AND USE TAXES

State and local sales and use taxes, as required by the laws and statutes of the State and its political subdivisions, shall be paid by the Contractor. Prices quoted in the Proposal shall include all sales and use taxes.

3.5 FAIR EMPLOYMENT

No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex of such persons, except as provided in Section 12940 of the California Government

Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter.

The Owner values and celebrates diversity, equity and inclusion and seeks a wide range of perspectives and life experiences in the workplace and in the communities with which it engages.

3.6 RESPONSIBILITIES OF APPLICANTS

It is the responsibility of each Applicant before submitting a Proposal to:

- A. examine and carefully study the Proposal Documents, and the other related data identified in the Proposal Documents;
- B. visit the Site and become familiar with and satisfy Applicant as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. become familiar with all site permits may affect cost, progress, and performance of the Work (Link to Permit Package here: <https://www.americanrivers.org/3cpproject/>);
- E. carefully study all: design drawings, technical specifications, and other provided documents;
- F. agree at the time of submitting its Proposal that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Proposal for performance of the Work at the price(s) Proposed and within the times required, and in accordance with the other terms and conditions of the Proposal Documents;
- G. promptly give Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Applicant discovers in the Proposal Documents and confirm that the written resolution thereof by Owner is acceptable to Applicant; and
- H. determine that the Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

The submission of a Proposal will constitute an incontrovertible representation by Applicant that Applicant has complied with every requirement of this Section 2, that without exception the Proposal is premised upon performing and furnishing the Work required by the Proposal Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Proposal Documents, that Applicant has given Owner written notice of all conflicts, errors, ambiguities, and discrepancies that Applicant has discovered in the Proposal Documents and the written resolutions thereof by Owner are acceptable to Applicant, and that the Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

3.7 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The time of completion of the work to be performed under this Contract is of the essence to the Contract. Delays and extensions of time may be allowed in accordance with the provisions stated in the General Conditions. The Contract time for performance shall begin on the date specified in the written Notice to Proceed, expected to be on or around December 1, 2020 and shall extend through April 30,

2023. Failure to timely complete said work, unless excused under the terms of the Contract, shall entitle Owner at its option to collect liquidated damages in the amount of \$1,307.39 each calendar day until completed. Contractor understands and agrees that this public works project will create public benefits, the delay of which will cause incalculable losses to the Owner, the District, the City of Brentwood, East Bay Regional Parks, and the public, and that the above sum is a reasonable attempt by the Owner to quantify such losses. Contractor and Owner agree to the aforementioned amount.

Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to sue for and recover compensation for damages for nonperformance of this contract within the time stipulated.

3.8 OPTIONAL PRE-PROPOSAL MEETING

American Rivers with the Project Management Team will host an optional, pre-proposal video conference meeting on Tuesday, June 10, 2020 at 12:00 p.m. (noon, PDT) for potential Applicants to view the proposed Site via screenshare, ask questions of representatives of the Project Management Team and ask questions about the Project.

Join Zoom Meeting: <https://zoom.us/j/99677455574?pwd=Skg5MlprV2Q5dm9Cc1dUODBBWW9rZz09>

Meeting ID: 996 7745 5574

Password: 768746

Or call: One tap mobile +16699006833,,99677455574# US (San Jose)

3.9 INTERPRETATIONS AND ADDENDA

All questions about the meaning or intent of the Proposal Documents are to be submitted to the Owner in writing via email (3Creeks@americanrivers.org). Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda in electronic format posted at the same website: <https://www.americanrivers.org/3cpproject/>. Questions received after 5 pm (PDT) on Monday June 15, 2020 but prior to the proposal due date may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may be issued to clarify, correct, or change the Proposal Documents as deemed advisable by Owner.

3.10 PREPARATION OF PROPOSAL

The Proposal Form is included with the Proposal Documents. Additional copies may be obtained from Owner, and a fillable PDF copy of Proposal Form is available the website: <https://www.americanrivers.org/3cpproject/> The Proposal Form and Proposal Documents shall be submitted electronically via email to 3Creeks@americanrivers.org. All blanks on the Proposal Form shall

be completed and the Proposal Form signed with a verifiable digital signature capable of identifying the signer through a certificate-based (encrypted) digital ID. A Proposal price shall be indicated for each Proposal item listed therein with profit listed as a separate element.

Although Owner prefers electronic submission of the Proposal Form and Proposal Documents, with prior email approval from Owner, Applicant may submit hard copies of the Proposal Form and Proposal Document via mail. The hard copy Proposal Form should be submitted in an envelope separate from other Applicant materials and labeled: "Proposal Form." All blanks on the Proposal Form shall be completed and the Proposal Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form. A Proposal price shall be indicated for each Proposal item listed therein with profit listed as a separate element.

All names shall be printed below the signatures.

Postal and e-mail addresses and telephone number for communications regarding the Proposal shall be shown.

The Proposal shall contain evidence of Applicant's authority and qualification to do business in the state where the Project is located, or Applicant shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Proposal. Applicant's state contractor license number, if any, shall also be shown on the Proposal Form.

Costs incurred by Applicant for developing its Proposal and in anticipation of award of the agreement are entirely the responsibility of the Contractor and shall not be charged to Owner. All submittals become the property of Owner upon receipt and will not be returned to Contractor.

3.11 SECURITY

Proposals must be accompanied by a certified check, or cashier's check drawn on a bank in good standing, or a security bond issued by a Surety company who appears on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located, in an amount not less than five (5) percent of the total amount of the Proposal. This security shall be given as a guarantee that the Applicant will not withdraw their Proposal for a period of ninety (90) days after the Proposal due date, and that if awarded the Contract, the successful Applicant will execute the attached Contract and furnish the required Insurance Certificates, followed by the required Performance Bond and Payment Bond which Contractor shall be provide at the preconstruction conference that shall be held within four (4) weeks before the Notice to Proceed.

Within fifteen (15) days after the award of the Contract, the Owner will return checks given as securities to Applicants whose Proposals are not to be further considered in awarding the Contract. Retained securities will be held until the Contract has been finally executed, after which securities, other than Applicants' bonds and any guarantees which have been forfeited, will be returned.

3.12 RESPONSE DEADLINE AND SUBMITTAL OF PROPOSAL

The Applicant's Checklist and Proposal Form, found in Subsections 2.13 and 2.14, respectively, must be completed and submitted with the applicable attachments.

Electronic submittals will be accepted no later than 5:00 p.m. (PDT) on Tuesday June 30, 2020 and must be sent with subject line as: "Request for Proposals – Three Creeks Parkway Restoration Project." Proposals must be submitted electronically via email to 3Creeks@americanrivers.org with a verifiable digital signature capable of identifying the signer through a certificate-based (encrypted) digital ID. Files and attachments must not exceed 10 megabytes in size or they will not be able to be received electronically.

Paper submittals must be received in the office no later than 5:00 p.m. (PDT) on Tuesday June 30, 2020, and plainly marked on the outside of the envelope: "Request for Proposals – Three Creeks Parkway Restoration Project."

Request for Proposals – Three Creeks Parkway Restoration Project

American Rivers, Inc.

Attn: Amy Merrill

2150 Allston Way, Suite 320

Berkeley, California 94704

Email: 3Creeks@americanrivers.org

PLEASE NOTE: American Rivers will not accept facsimile (FAX) responses. Submittals must be received by the time and process indicated above. **Hard copy and Email Proposals received after that time will not be accepted.**

3.13 APPLICANT’S CHECKLIST

APPLICANT’S CHECKLIST

This checklist has been prepared and furnished to aid Applicants including all necessary supporting information that should be submitted with the Proposal. Applicant’s signature is required on all of the documents indicated below. Omission of signature may be grounds for rejection of the Proposal. Applicants’ submittals should include, but are not be limited to, the following:

ITEM

1. Proposal (Proposal Form & Proposal Bid Schedule) _____
2. Applicant’s Checklist _____
3. Applicant’s Bond or other Security _____
4. Power-of-Attorney for Surety’s Agent to execute Applicant’s Bond _____
5. Authority to sign Proposal if signature is by agent other than officer of corporation, partner, or owner _____
6. Acknowledgment of any Addenda _____
7. List of Subcontractors _____
8. Applicant Questionnaire _____
9. Non-Collusion Affidavit (attached to Proposal) _____

Signature of Applicant

* * * * *

3.14 PROPOSAL FORM

PROPOSAL FORM

To: American Rivers, Inc.
Attn: Amy Merrill
2150 Allston Way, Suite 320
Berkeley, California 94704
3Creeks@americanrivers.org

Submitted by: _____ A Corporation
 A Partnership
 An Individual

Principal office: _____

Person to contact for additional information on this submittal:

Name: _____

Address: _____

Phone: _____ Email: _____

APPLICANTS DECLARATION AND UNDERSTANDING

THE UNDERSIGNED APPLICANT having familiarized itself with the Work required by the Contract Documents, all site conditions where the Work is to be performed, local labor conditions and all laws, regulations, and other factors affecting the performance of the Work, and having satisfied itself of the expense and difficulties attending performance of the Work.

HEREBY PROPOSES and agrees, if this Proposal is accepted, to enter into Agreement in the form attached and to perform all Work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work, tools, equipment, supplies, transportation, facilities, labor, superintendence, permits and services required to perform the Work, to the satisfaction of Owner and to provide all required Bonds, insurance and submittals.

The undersigned Proposer agrees to furnish evidence of insurance and to execute the contract and deliver the same to Owner within ten (10) days after receipt of Notice of Award by the Owner. The required bonds shall be delivered at the preconstruction conference that shall be held within four (4) weeks before the Notice to Proceed.

The Applicant further agrees that in the event Applicant fails to comply with the foregoing provisions, the Proposal security accompanying this Proposal shall become the property of American Rivers, Inc. who shall be entitled to the full benefit thereof.

Proposal Form – Page 1

Owner will award the Proposal with the highest score, based on the Scoring Criteria described in Section 3.2 which, in the Owner's and Project Management Team's judgment, with consultation with the District, will best serve the interest of the Owner.

The undersigned Applicant acknowledges receipt of the following Addenda, which have been considered in preparation of this Proposal:

No. _____ Dated _____

No. _____ Dated _____

Dated in _____ this _____ day of _____, 2020.

BUSINESS ADDRESS OF APPLICANT: _____

SIGNATURE OF APPLICANT: _____

Contractor's License Number _____
and Expiration Date _____

License Classification _____

Qualified Applicator's License Number _____
And Expiration Date _____

A. If an Individual: _____, doing business
as _____

B. If a Partnership: _____
By _____, partner

C. If a Corporation: _____
(a _____ Corporation)
By _____

Title _____

D. If Applicant is a joint venture, appropriate parties must sign below.

By _____

Title _____

Applicant's Landscaping Contractor License Number _____

If managing partner is an Individual:

Doing business as _____

If managing partner is a Partnership:

By _____

Title _____

If managing partner is a Corporation:

(a _____ Corporation)

Title _____ (ATTEST)

* Attached hereto and made a part hereof is:

1. Statement and Applicant's Bond
2. List of Subcontractors
3. Non-collusion Affidavit (notarized)

APPLICANT'S BOND

Herewith find deposit in the form of a certified check, cashier's check, or security bond in the amount of \$ _____, which amount is not less than five percent (5%) of the total bid.

Signature _____

SECURITY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and
_____, as Surety, are held and firmly bound,
unto the American Rivers, Inc. as Obligee in the penal sum of _____
dollars for the payment of which the Principal and the Surety bind themselves, their heirs, executors,
administrators, successors and assign, jointly and severally, these presents.

The condition of this obligation is such that if the Obligee shall make any award to the Principal for implementation of the Three Creeks Parkway Restoration Project according to the terms of the proposal or bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall provide evidence of required insurance and contractually agree to provide at the preconstruction conference the bond for payment of material and laborers and for the faithful performance thereof, with Surety and Sureties approved by the Obligee; or if the Principal shall, in case of failure so to do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS _____ day of _____, 2020.

Principal

Surety

_____, 2020

Received return of deposit in the sum of \$ _____.

Signature

LIST OF SUBCONTRACTORS

Applicant shall submit with its Proposal the names and business addresses of each subcontractor who will perform work under this Contract in excess of 5 percent of the total Proposed Proposal and shall list the portion of the work which will be done by such subcontractor. Notwithstanding the former and regardless of the contractual monetary amount, Contractor shall seek Owner’s prior written approval of the weed management advisor and/or pesticide applicator whether carried out by one subcontractor or two. If selected as the successful Applicant, Contractor shall take the steps required under Section 5.6.4, Good Faith Efforts (40 CFR Chapter I, Subchapter B, Part 33, Subpart C, § 33.301), when awarding subcontracts. If the Applicant fails to specify a contractor for any portion of the work, the Applicant agrees to perform that portion itself.

The successful Applicant shall not, without the consent of the Owner, either:

1. Substitute any person as Subcontractor in place of the Subcontractor designated in the original Proposal.
2. Permit any subcontract to be assigned or transferred or allow it to be performed by anyone other than the original Subcontractor listed in the Proposal.
3. Sublet or subcontract any portion of the work in excess of five (5) percent of the total Proposed Proposal as to which the original Proposal did not designate a Subcontractor.

The Applicant assumes responsibility for all work contracted or subcontracted from this Proposal.

Portion of Work	Subcontractor Name & Business Address	License Number

 (Signature of Applicant)

APPLICANT QUESTIONNAIRE

1. Describe your firm’s experience and qualifications for performing the proposed work.
2. Provide project owner references and contact information for at least two projects of similar size and type.

Project Name	Year completed	Owner Contact Information (Name, Phone Number)	Project Size (acres)

3. Provide an organizational chart for the staff. Describe the experience and qualifications of proposed key personnel (e.g., managers, supervisors, crew leaders) and the experience and ability of crewmembers to perform the proposed work to high quality standards. Please be specific and include information about previous work, training, and certifications that apply.
4. Describe how your firm would implement the proposed work, including the specific steps, order, methods, tools, crew size and organization, and any other relevant information that provides a complete description of how your team would implement the project. If you are subcontracting any tasks, please describe in detail how subcontractors will be utilized and managed.

**NON-COLLUSION DECLARATION
TO BE EXECUTED
BY APPLICANT AND SUBMITTED WITH PROPOSAL**

State of California

County of _____

The undersigned declares:

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

Any person executing this declaration on behalf of Applicant that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power to execute, and does execute, this declaration on behalf of the Applicant.

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

correct and this declaration is executed on _____, at _____, California.
(date) (city)

(Signature of Applicant)

WORKERS COMPENSATION CERTIFICATE

I, _____, of _____,
am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this contract.

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

Signature: _____
(Signature of Applicant)

Date: _____, 2020, at _____.

3.15 PROPOSAL BID SCHEDULE

This bid schedule is available as an interactive spreadsheet.

BASE BID and MAINTENANCE FOR ADDITIVE 1-3					\$0.00
Description	Unit Cost	Unit	Qty	Bid Cost	Item Total
TASK 1. MOBILIZATION					
Mobilization / Bonds / Insurance		LS	1	\$0.00	\$0.00
TASK 2. SITE IMPROVEMENTS, BASE BID AREA					
Mulch Path - 30" Width		LS	1	\$0.00	\$0.00
Mulch at Central Triangle		LS	1	\$0.00	\$0.00
Interpretive Sign		EA	1	\$0.00	\$0.00
Bikeway Sign		EA	3	\$0.00	\$0.00
Restoration Fence		LS	1	\$0.00	\$0.00
CCC Standard Gate		EA	1	\$0.00	\$0.00
TASK 3. YEAR 1 IRRIGATION					
Irrigation System Extension / Adjustments (Sungold Park)		LS	1	\$0.00	\$0.00
Year 1 Watering Labor and Water, Restoration area		LS	1	\$0.00	\$0.00
TASK 4. Y1 PLANT INSTALLATION					
Mulch 4" Depth		SF	57910	\$0.00	\$0.00
15 Gallon Tree		EA	53	\$0.00	\$0.00
5 Gallon Shrub		EA	150	\$0.00	\$0.00
1 Gallon Shrub		EA	328	\$0.00	\$0.00
TP4 Tree/TB4/1G		EA	772	\$0.00	\$0.00
4-inch Pot Groundcover		EA	209	\$0.00	\$0.00
D-40 Pot		EA	2465	\$0.00	\$0.00
Plugs/D16/SC		EA	11902	\$0.00	\$0.00
Small Poles (Live material: Cottonwood and Willow)		EA	772	\$0.00	\$0.00
Large Poles (Live material: Cottonwood)		EA	183	\$0.00	\$0.00
Collection Of Live Materials		LS	1	\$0.00	\$0.00
Seeding Disturbed Areas (include seed cost)		AC	1	\$0.00	\$0.00
TASK 5. MAINTENANCE & MANAGEMENT BASE BID					
Year 1 Maintenance Labor		LS	1	\$0.00	\$0.00
Year 2 Maintenance and Watering Labor and Water		LS	1	\$0.00	\$0.00
Year 3 Maintenance and Watering Labor and Water		LS	1	\$0.00	\$0.00
ADDITIVES 1-8					\$0.00
ADDITIVE BID 1. TRAIL SURFACING UNDER CENTRAL					
EBRPD Pipe Gate		EA	2	\$0.00	\$0.00
ADDITIVE BID 2. DEER CREEK TO SAND CREEK					
Year 1 Initiate Irrigation system and Labor, D-S Creek		LS	1	\$0.00	\$0.00
Large Poles (Live material: Cottonwood)		EA	72	\$0.00	\$0.00
Collection Of Live Materials		LS	1	\$0.00	\$0.00
Mulch 4" Depth		SF	9,833	\$0.00	\$0.00
15 Gallon Tree Installation		EA	18	\$0.00	\$0.00
TP4 Tree/TB4/1G Installation		EA	181	\$0.00	\$0.00
5 Gallon Installation		EA	26	\$0.00	\$0.00
D-40 Pot Installation		EA	578	\$0.00	\$0.00
Plugs/D16/SC Installation		EA	2792	\$0.00	\$0.00
Year 1 Maintenance and Watering Labor and Water		LS	1	\$0.00	\$0.00
Year 2 Maintenance and Watering Labor and Water		LS	1	\$0.00	\$0.00
Year 3 Maintenance and Watering Labor and Water		LS	1	\$0.00	\$0.00

Three Creeks Parkway Restoration Project
Proposal Documents for Landscaping Services

BID ADDITIVE 3. GREENWAY AMENITIES					\$0.00
Decomposed Granite Paving - Stabilized		SF	724	\$0.00	
Mulch 4" Depth (Duffy Meadow)		SF	1250	\$0.00	
1 Ton Rock		TON	5	\$0.00	
2.5 Ton Rock		TON	2.5	\$0.00	
Restoration Fence		LF	84	\$0.00	
Steel Header		LF	206	\$0.00	
Salvage and Relocate Existing Site Furnishing (By Footing)		LS	1	\$0.00	
Log Bench On Grade - Freestanding		LF	24	\$0.00	
Log Bench On Grade - Retaining & Sloped Condition		LF	81	\$0.00	
ADDITIVE BID 4. BRIDGE ABUTMENTS and BRIDGE SPUR TRAIL					\$0.00
Mulch 4" Depth (Planting Area)		SF	850	\$0.00	
1 Ton Rock		TON	7	\$0.00	
2.5 Ton Rock		TON	5	\$0.00	
Log Bench On Grade - Freestanding		LF	36	\$0.00	
BID ADDITIVE 5. DAINY TRIANGLE PARK					\$0.00
Decomposed Granite Paving - Stabilized		SF	2,235	\$0.00	
Mulch Path - 30" Width		LF	142	\$0.00	
Steel Header		LF	19	\$0.00	
Sign Board - Dainty Triangle Park		EA	1	\$0.00	
Timber Bench On Existing Concrete Pedestal		LF	24	\$0.00	
Irrigation System Extension / Adjustments		LS	3,667	\$0.00	
Mulch 4" Depth		SF	3000	\$0.00	
15 Gallon Tree (Procure and Install)		EA	17	\$0.00	
5 Gallon Shrub (Procure and Install)		EA	18	\$0.00	
1 Gallon Shrub (Procure and Install)		EA	66	\$0.00	
4-inch Pot Groundcover (Procure and Install)		EA	77	\$0.00	
ADDITIVE BID 6. BRIDGE					\$0.00
Not Applicable to Landscape Set					
ADDITIVE BID 7. Y2 PLANTING					\$0.00
Small Poles (Live Materials: Cottonwood and Willow)		EA	456	\$0.00	
Collection Of Live Materials		LS	2.25	\$0.00	
Mulch 4" Depth		SF	39,359	\$0.00	
TP4 Tree/TB4/1G Install		EA	1015	\$0.00	
D-40 Pot Install		EA	1761	\$0.00	
Plugs/D16/SC Install		EA	15,403	\$0.00	
ADDITIVE BID 8. Y3 PLANTING					\$0.00
Small Poles (Cottonwood and Willow)		EA	20	\$0.00	
Collection Of Live Materials		LS	1	\$0.00	
Mulch 4" Depth		SF	25,272	\$0.00	
TP4 Tree/TB4/1G Install		EA	811	\$0.00	
D-40 Pot Install		EA	823	\$0.00	
Plugs/D16/SC Install		EA	6422	\$0.00	

3.16 WITHDRAWAL OF PROPOSAL SUBMITTALS

A proposal submittal may be withdrawn at any time prior to the time set for receipt of submittals, provided that a request for withdrawal prepared by the submitter or a duly authorized representative is filed with American Rivers. The withdrawal of a submittal package shall not prejudice the right to resubmit prior to the time set forth herein above.

A Proposal may be modified or withdrawn by an appropriate document duly executed in the same manner that a Proposal must be executed and delivered to the place where Proposals are to be submitted prior to the date and time for the opening of Proposals.

If within 24 hours after Proposals are opened any Applicant files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Proposal, that Applicant may withdraw its Proposal.

3.17 REJECTION OF PROPOSAL SUBMITTALS

Owner reserves the right to reject any or all Proposals, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Proposals. Owner further reserves the right to reject the Proposal of any Applicant whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Proposal of any Applicant if Owner believes that it would not be in the best interest of the Project to make an award to that Applicant. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Applicant.

More than one Proposal for the same Work from an individual or entity under the same or different names will not be considered.

In evaluating Applicants, the Project Management Team will consider the qualifications of Applicants and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as part of the Proposal Form.

4 AWARD OF CONTRACT

4.1 BASIS OF AWARD

The award will be made to the most responsive and responsible, qualified and highest scoring Applicant on the basis of the Scoring Criteria provided in Section 3.2 which, in the Owner's and Project Management Team's judgment, with consultation with the District, will best serve the interest of the Owner. The Owner reserves the right to accept or reject any or all Proposals, and to waive any informalities and irregularities in said Proposals.

The Project Management Team will review each Proposal based on submittal of a timely and complete set of Proposal documents and the Scoring Criteria. This information shall be viewed in relation to the nature of the proposed Project, the complexity and special requirements of the specific services, and the

needs of the Project Management Team. All complete Proposals received within the time limits will be evaluated to determine their scores based on the Scoring Criteria. If a Proposal fails to meet a material solicitation document requirement, the Proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with solicitation document requirements. Material deviations may cause a Proposal to be rejected if not corrected upon request.

During the evaluation process, the Project Management Team may require Applicant to answer questions with regard to the Applicant’s proposal. Failure of Applicant to demonstrate that the claims made in its Proposal are in fact true may be sufficient cause for deeming a Proposal non-responsive.

Applicants will be notified by email of the Project Management Team’s selection and overall evaluation results.

4.2 SCORING CRITERIA

The Project Management Team, consisting of American Rivers staff, Sarah Puckett, and Erik Stromberg of RDG, will evaluate Proposals using the following scoring criteria:

	SCORING CRITERIA	MAXIMUM POINTS
1.	Proposals Responsive to RFP Proposal includes all required documents per Applicant’s Checklist (Section 2.13) and is submitted on time.	PASS/FAIL
2.	Cost Effectiveness of Proposal	40
3.	<p>Applicant/Contractor Experience and Qualifications Quality and demonstrated effectiveness of the firm’s experience and qualifications to do the proposed work. This includes a demonstration of the Applicant’s ability to complete similar projects on time and in budget while producing high quality work. Responses from references will be factored into these criteria. Considerations include, but are not limited to, Applicant’s experience and success in the following areas:</p> <ul style="list-style-type: none"> • Revegetation and maintenance of newly installed native vegetation in an urban/rural context; • Completing installation of native plant and irrigation systems according to Engineer designs and specifications; • Accommodating managed volunteer or other subcontractor engagement for planting and/or weed management in a restoration project; • Directing or redirecting actions to meet success criteria through adaptive management; • Demonstrated team knowledge or familiarity with native riparian vegetation. 	20

4.	<p>Personnel Experience and Qualifications Collective professional experience of the firm/team in performing services of similar nature and scope, including weed management and native revegetation within an urban/suburban environment. These criteria will be judged on the unique experience and qualifications of the proposed field crew supervisor(s) and the experience and ability of crew members to perform the proposed work to high quality standards. Considerations include, but are not limited to, experience and success in the following areas:</p> <ul style="list-style-type: none"> • Preparing soil and installing container-grown stock according to specified methods; • Experience using soil bioengineering methods to stabilize slopes, such as coir fabric, wattles, and live cuttings; • Experience harvesting, storing, and installing live willow and cottonwood cuttings; • Experience establishing native grass cover from seed; • Experience installing or applying effective irrigation systems in an urban/suburban environment; • Equipment safety and training. 	20
5.	<p>Project Implementation Description These criteria will be judged by the Applicant’s stated plan for implementation of the project with a focus on orderliness, efficiency, and thoroughness, and including proposed plans to irrigate restoration areas and to accommodate volunteer efforts managed by Owner or other Partner or subcontractor for planting and/or weed management.</p>	15
6.	<p>Certified disadvantaged, women, or minority business enterprise participation, and demonstrated commitment of the firm(s) to principles of diversity, equity, and inclusion¹.</p>	5
Total Possible Points		100

4.3 PROJECTED TIMELINE

The following schedule has been established for the proposal and selection process. Every effort will be made to adhere to this plan, but Owner reserves the right to adjust the dates as may be required by circumstances. Contractor selection will be decided by the Project Management Team.

- Request for Proposals available to prospective Applicants.....May 27, 2020
- Optional pre-proposal remote meeting.....June 10, 2020
- Written question submittal deadline.....June 15, 2020

¹ <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>

- Final date for proposal submittals.....June 30, 2020
- Selection of contractor.....Within 30 days
- Contract executed.....by July 30, 2020

4.4 ACCESS TO SITE AND LANDOWNER AGREEMENTS

Use of the Site is governed by Access Agreements between the Owner and the Site’s property owners (Landowners). Contractor will conform with all requirements in these Access Agreements. A copy of the Agreements will be provided to the successful Applicant.

4.5 PERMITS

The following are the applicable permits for work for the Project:

- Lake and Streambed Alteration Agreement – CA Department of Fish and Wildlife (12/5/17 – 10/31/23)
- 401 Water Quality Certification – Central Valley Regional Water Quality Control Board (3/16/2018 – 3/15/2023)
- 404 Water Quality Certification – US Army Corps of Engineers (10/28/2019 – 10/27/2024)
- Planning Survey Report/Certificate of Coverage (ECCCHCP)
- East Bay Regional Park District Encroachment Permit (Contractor obtains)
- City of Brentwood Encroachment Permit (Contractor obtains)
- City of Brentwood Combined Grading/Building Permit (Contractor obtains if necessary)
- Certification of Consistency with Delta Plan (1/24/2020 – 1/24/2024)
- Encroachment Permit with District (Contractor obtains)

The permits package is available at this link: <https://www.americanrivers.org/3cpproject/>

4.6 NOTICE OF AWARD

NOTICE OF AWARD
THREE CREEKS PARKWAY RESTORATION PROJECT

To:

Address:

The Contract Price of your contract is \$_____.

Two copies of the proposed Contract Documents accompany this Notice of Award.

Upon commencement of the work, you and each of your subcontractors shall certify and make available for inspection payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with section 1776 of the California Labor Code.

You must deliver to the American Rivers, Inc. as conditions precedent within ten (10) days following the receipt of this Notice.

1. Two fully executed counterparts of the Contract.
2. A completed W-9.
3. The insurance certificates required by Article 5.3, as supplemented by SC-3 of the Supplementary Conditions of this Contract.
4. The Workers Compensation Certificate required by Section 1861 of the Labor Code.

Failure to comply with these conditions within the time specified will entitle American Rivers, Inc. to consider your Proposal abandoned, your security forfeited as liquidated damages, void this Notice of Award, and award the Contract to the next responsive and responsible, qualified, and highest scoring Applicant. Within ten (10) days after you comply with the above conditions, American Rivers, Inc. will return to you one fully signed counterpart of the Contract with the Contract documents attached.

You must deliver at the preconstruction conference to be held within four (4) weeks before the Notice to Proceed:

1. The Performance Bond.
2. The Payment Bond.

American Rivers, Inc.

By: _____

Its: _____

5 SCOPE OF WORK

5.1 PROJECT DESCRIPTION

Project restoration site is located on Marsh Creek in the City of Brentwood, eastern Contra Costa County, California. It is an approximately 4,000 linear foot length of channel and riparian corridor that ranges from approximately 100 to 200 feet in width and extends from the north side of Dainty Avenue to just upstream (south) of the Union Pacific railroad crossing near Sungold Park. As soon as civil construction activities are completed, the Civil contractor will treat the entire site with a native hydro-seed mix to reduce the risk of erosion and colonization by invasive species. The Civil contractor will be completed with the project by December 2020.

The successful Contractor of this Proposal will initiate work on-site as early as November 15, 2020. The Scope of Work for the Contractor includes furnishing all labor, equipment, materials, storage, transportation and services required for completion of the Project in accordance with these Proposal Documents (including attached Design and Specifications).

5.2 PROJECT PARTNER ROLES AND RESPONSIBILITIES

The table below outlines the major tasks and responsibilities for Project Partners in order to provide a better understanding of how Project tasks and responsibilities are allocated.

Table 1. Partner Roles and Responsibilities

Project Partner	Tasks and Responsibilities
American Rivers	Project management, administration, monitoring support
Contra Costa County Flood Control and Water Conservation District	Landowners of channel, manage civil implementation
Restoration Design Group	Project design, assist project implementation management, project monitoring
Watershed Nursery	Supply native container plants for restoration plantings (Contractor shall provide the non-native container plants for Sungold Park and Dainty Triangle)
Sarah Puckett	Project management, public outreach
Friends of Marsh Creek Watershed	Monitoring support, volunteer support
Earth Team	Monitoring support, volunteer support

Project Partner	Tasks and Responsibilities
East Bay Regional Park District	Manage and maintain Marsh Creek Regional Trail
City of Brentwood	Landowners of Sungold Park, Marsh Creek Staging Area at Central Blvd Staging Area, and weed abatement areas (Dainty Triangle, Duffy Meadow)
California Conservation Corps	Maintenance
East Contra Costa County Habitat Conservancy	Habitat Conservation Plan permit associated project maintenance and monitoring
Contra Costa Resource Conservation District	Monitoring and/or maintenance support

5.3 TASK SUMMARIES

Tasks for the Project, to begin in November/December 2020 and be completed by April 2023, are summarized below. Project work entails five tasks plus eight additives that might be included in final work.

Full detail of these task descriptions, submittals, and other required documents is provided in the Landscape Design and Specifications:

5.3.1 BASE BID

The Base Bid is described below as Tasks 1-5 and includes mobilization, soil preparation, year 1 plantings, irrigation, site improvements and furnishings, and maintenance in the Project Area except the reach between Sand and Deer Creeks (Additive 2) and Dainty Triangle Park (Additive 5).

Task 1. Mobilization and Demobilization

Includes in general, development and submittal of projected work schedule, movement of appropriate equipment, materials, and incidentals, obtaining permits necessary to execute the work in the Project site (including procurement of new or revised existing EBRPD Encroachment Permit, procurement of new or revised existing City of Brentwood Permit, and procurement of new or revised existing District Encroachment Permit, as necessary), adherence to existing permit requirements (see Section 3.5 Permits), and provision of required bonds and proof of insurance. This task also includes removal of all tools, equipment and unused materials and supplies from the Project site and restoration of staging area to pre-construction condition (see Specifications 1. Mobilization).

Task 2. Site Improvements and Furnishings

Includes in general, procurement and installation of two interpretive signs, three bikeway signs and accoutrements and other signs as required in specifications linked to base bid and selected additives, as

well as procurement and installation of benches, logs on grade, required fencing and gates, and site boulders. This task also includes obtaining (and disposing of unused) materials, preparation of surface materials and installation of all materials needed to surface Marsh Creek Trail within the Project Site, providing shop drawings and mock-ups for site work per Design and Specifications, and including all elements as implemented in As-Built Drawings to be provided at end of Year 1 and end of Year 3 (see Specifications 2. Furnishings, Specifications 3. Site Boulders, and Specifications 4. Aggregate Surfacing).

Task 3. Year 1 Irrigation

Includes in general, park and restoration irrigation, assessment of existing irrigation systems, as well as purchase, transportation, and installation of all products required to complete the work. It also includes irrigation installation, testing, and coordination between proposed and existing city irrigation at Sungold Park, as well as design and implementation of restoration irrigation for all restoration plants indicated for temporary irrigation in Landscape Designs, Base Bid area for Year 1, as well as the water itself. This task also includes recording all elements as implemented in As-Built Drawings to be provided at end of Year 1 and end of Year 3 (see Specifications 5. Irrigation).

Task 4. Year 1 Plant Procurement and Installation, Soil Preparation and Management in Base Bid area

Includes in general, procuring plants for Sungold Park, mulch, and collection, transportation, preparation, and installation of live cuttings (such as all small and large pole plantings of willow and cottonwood), preparation and seeding of disturbed soil areas, wattle and fabric installation for Year 1 in Base Bid area. This task includes installation of all plants and associated products specified and noted on Plans for Year 1 in the Base Bid area, and includes recording all elements as implemented in As-Built Drawings to be provided at end of Year 1 (see Specifications 6. Planting; Specifications 7. SoilBioEngineering). Contractor will work with American Rivers who will coordinate the CA Conservation Corps, Earth Team, volunteer, and community groups in volunteer and subcontractor planting efforts for a subset of the Project Site.

Task 5. Maintenance Years 1-3 in All Planted Restoration Areas

Contractor is responsible for maintenance and irrigation throughout duration of the three-year contract, with the exception of the planting within Sungold Park, which will be maintained by the City. Well timed irrigation and controlling invasive, non-native plant species will be key to successful restoration at the sites. On-going weed maintenance during the three-year project period will focus on control of High and Moderate Priority invasive weeds, as listed by the California Invasive Plants Council (Appendix)². However, performance success criteria (Section 4.5 below) are based on both weed control (low percent cover of weeds) and on success of native plant species (moderate to high percent cover of native plants). Thus, cover of non-native weeds not listed in Appendix will need to be held in check to support establishment and expansion of native plant species. Native grass seed mix will be applied across the site by the Civil Contractor upon completion of the Civil work before December 2020. The Landscape

² Undesirable invasive plants are listed in Appendix and defined as Cal-IPC defined at a minimum to include all species with a “Moderate” or “High” rating (<https://www.cal-ipc.org/plants/inventory/>).

Contractor will procure additional seed and reseed the areas with native species where disturbed by Landscape construction. A three-year period of weed maintenance and native plant management will include irrigation (including the water itself), mowing, spot use of herbicides, and hand removal of weeds and remedial planting of natives as necessary in order to meet performance goals for weed and native plant species cover (see Section 4.5 Performance Success Criteria). Contractor will work with American Rivers who will coordinate the CA Conservation Corps, Earth Team, volunteer, and community groups in volunteer and subcontracted weed management efforts in the Project Site. This task also includes recording all elements as implemented in As-Built Drawings by the Contractor and/or their subcontractors to be provided at end of Year 3.

In addition to the above tasks for the Base Bid, eight additive tasks are listed below.

5.3.2 ADDITIVES 1 THROUGH 8.

All or some of the following additives will be included in the Work (not necessarily in numeric order), dependent on cost and funding available. Full detail of Work associated with each Additive is provided in the Landscape Drawings and Specifications included in the Proposal Package.

Additive 1. Trail surfacing under Central Avenue bridge: Obtain and install single pipe gates under Central Avenue bridge, include design elements as implemented in As-Built Drawings for Years 1 and 3.

Additive 2. Deer Creek to Sand Creek improvements: Collect additional live materials, install, mulch and water and maintain plants for Year 1 in area between Deer and Sand Creeks along Marsh Creek.

Additive 3. Greenway amenities: Obtain and install boulders, logs and other amenities at Sand Creek confluence, Central Boulevard Triangle and at Duffy Meadow; include design elements as implemented in As-Built Drawings for Years 1 and 3.

Additive 4. Bridge abutments and spur trail: Obtain and install boulders, benches, and mulch around plantings (plantings included in Base Bid) by the new Pedestrian Bridge abutments.

Additive 5. Dainty Triangle Park: Obtain and install decomposed granite paving, sign, benches, irrigation system, and plants for park; include design elements as implemented in As-Built Drawings for Years 1 and 3.

Additive 6. *Pedestrian Bridge: Not applicable to Landscape Set.*

Additive 7. Year 2 planting: Includes procurement of small and large pole plantings (willow and cottonwood) for Base Bid Planting area and area between Deer and Sand Creeks along Marsh Creek; include design elements as implemented in As-Built Drawings for Years 1 and 3.

Additive 8. Year 3 planting: Includes procurement of small and large pole plantings (willow and cottonwood) for Base Bid Planting area and area between Deer and Sand Creeks along Marsh Creek; include design elements as implemented in As-Built Drawings for Years 1 and 3.

5.4 SCHEDULE OF WORK

The following general schedule outlines the expected timing for Tasks 1-5 and for implementing additives 1 through 8.

Task	Year Task or Action	2020	2021				2022				2023	
		Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
1	Mobilize / Demobilize											
2	Site Improvements / Furnishings											
3	Year 1 Irrigation											
4	Year 1 Planting											
5	Maintenance											
Add 1	Trail under Cntrl Ave Bridge											
Add 2	Deer to Sand Creek Plantings											
Add 3	Greenway Amenities											
Add 4	Bridge Abutments Amenities											
Add 5	Dainty Triangle Park											
Add 6	N/A											
Add 7	Year 2 Planting											
Add 8	Year 3 Planting											

5.5 PERFORMANCE SUCCESS CRITERIA

Vegetation planting and weed management activities in the Project Site will be monitored by American Rivers and Consultants for three years following year 1 planting (April 2021 through April 2023) to determine if the restoration goals are being met in the Project Site, with the exception of the planting in Sungold Park. Achievement of interim performance goals will be used as indicators of whether or not the Project is on a successful trajectory towards meeting the final goals by April 2023. Yearly monitoring of native plant and weed cover will be used to determine whether or not the Project is meeting these interim goals and to provide guidance for determining what actions might be needed. American Rivers will share monitoring reports with the Contractor and the District each year. If monitoring reveals that performance goals are not being met, weed management and/or remedial planting activities will be outlined in these reports and implemented by the Contractor.

Success will be achieved if American Rivers and Contractor(s) have planted and maintained vegetation during the three-year Planting Period to restore riparian vegetation while also ensuring that the Marsh Creek channel has enough capacity to maintain flood protection, as defined below.

Vegetation performance will be monitored annually based on the total vegetation cover, the percent cover of native and non-native invasive plants, percent cover of bare ground, canopy cover, and tree density (Table 2). Adaptive management recommendations will be provided for the Contractor following each monitoring event. For example, vegetation will have been successfully planted and maintained if the relative percent native plant cover is greater than 40% and the absolute canopy cover is greater than 5% in the Project Site by 2026.

Table 2. Vegetation Performance Criteria

	2021	Year 2023	Year 2026
Total vegetation cover (absolute)	>5%	>20%	>30%
% Native Plant Cover (relative)	>20%	>40%	>60%
% Highly Invasive Species (relative)	<15%	<10%	<5%
% Moderately Invasive Species (relative)	<20%	<15%	<10%
% Bare Ground (absolute)	<20%	<15%	<15%
% Canopy Cover (absolute; creek at low flow)	>1%	>5%	>12%
Tree density along trail (# live trees, height [ft] of trees per 40 ft of stream side trail)	2, 2	2, 3	2, 3 or 1, 4

In addition, American Rives and the District will work together to determine if American Rivers and the Contractor should remove or thin vegetation during the Project period if one or more of the two following conditions occur: 1) annual vegetation cover measurements exceed the maximum vegetation cover limits in Table 3 – Vegetation Cover Limits; and/or 2) hydraulic modeling indicates that existing vegetation density could result in undesired high water levels based on annual surveys. It is considered highly unlikely that vegetation growth and percent cover will be high enough to approach these thresholds during the first three years of planting, but measurements must be made to ensure that high water levels resulting from the plantings do not occur during this period.

Table 3. Vegetation Cover Limits within Project Site cover types mapped in page 1 of 3CP FC Diagrams document in Proposal Package

Metric	Maintenance Area	Cover Limits (Percent Cover)	
		Final Inspection (~Year 3)	
		Lower Limit	Upper Limit
Tree and Shrub Only Cover Limit	Riparian	0	10
	Dry Riparian	0	10
	Partially Armored	0	10
	Armored	0	0
Total Vegetation Cover Limit	Riparian	5	90
	Dry Riparian	5	90
	Partially Armored	5	80
	Armored	0	0

Annual measurements of percent vegetation cover during the Planting and Establishment Periods will be summarized in reports and shared with the Landscape Contractor and with the District to determine if replanting or removal of vegetation is necessary.

6 ADMINISTRATIVE PROCESS AND CONTRACT REQUIREMENTS

6.1 PRECONSTRUCTION CONFERENCE AGENDA

A preconstruction conference shall be held within four (4) weeks before the Notice to Proceed, and if possible, at the Project site. Owner will coordinate with the Contractor as to the date and time of the conference. Design Project Manager, Contractor's Project Manager, and Project Superintendent and Contractor's Subcontractor Representatives shall attend. The following items will be addressed during this conference:

- 6.1.1 Performance and Payment Bonds
- 6.1.2 List of Subcontractors
- 6.1.3 Projected Work Schedule
- 6.1.4 Critical work sequencing
- 6.1.5 Project coordination:
 - a. Designation of responsible personnel
 - b. Contractor shall accommodate media event(s) in coordination with Owner, as necessary
- 6.1.6 Procedures
- 6.1.7 Permit Requirements
- 6.1.8 Use of premises:
 - a. Office, work and storage areas
 - b. Owner's requirements
- 6.1.9 Construction facilities and construction aids
- 6.1.10 Safety and first-aid procedures
- 6.1.11 Housekeeping procedures

6.2 AGREEMENT FOR SERVICES

The selected Contractor shall be notified in writing, via email, that it was the successful applicant. Negotiations will follow, at which time Contractor will be asked to submit a detailed fee schedule for the Project specific work. The fee schedule shall show profit as a separate element. As a requirement of its funding source(s), Owner must establish that Contractor is charging a fair and reasonable profit by taking into account the complexity of work performed, the risk borne by Contractor, Contractor's investment, amount of subcontracting, and industry profit rates in the surrounding geographical area for similar work.

Owner will attempt to enter into negotiations with the selected Contractor for a satisfactory agreement and reasonable fee for the services needed.

If a satisfactory contractual agreement on services and compensation cannot be reached between Owner and the selected Contractor, Owner reserves the right to terminate negotiations with the selected Contractor and attempt to reach a satisfactory contractual agreement with the remaining qualified Contractors in order of their ranking.

The selected Contractor, with which Owner successfully negotiates, shall be required to execute an agreement, which shall incorporate the terms and conditions and materials of this Proposal Document, the General Conditions, and Supplementary Conditions.

Owner reserves the right to modify or update the agreement in the interest of Owner and the Project Management Team, in whole or in part, at any time up to and including during the negotiation of the agreement with the Contractor. By responding to this Request for Proposals, the prospective Contractor acknowledges that the it and its key subcontractors will provide the services required in the agreement.

AGREEMENT FOR SERVICES
BETWEEN
AMERICAN RIVERS, INC. AND CONTRACTOR NAME

This agreement (the “Agreement”) is made and concluded by American Rivers, Inc., a nonprofit corporation organized and existing under the laws of the District of Columbia, having its principal business address at 1101 14th Street, N.W., Suite 1400, Washington, D.C. 20005 (“American Rivers” or “Owner”) and Contractor Name (“Contractor”), a corporation having its principal business address at insert address. insert telephone number insert email.

Background

WHEREAS, American Rivers’ mission is to protect wild rivers, restore damaged rivers and conserve clean water for people and nature. American Rivers has undertaken a creek restoration project, the Three Creeks Parkway Restoration Project (Work or Project), located within the City of Brentwood, approximately 5.7 miles upstream of the creek’s outlet to Big Break in the Sacramento – San Joaquin Delta and roughly halfway between the Delta and the base of the creek’s headwaters on the eastern flanks of Mount Diablo;

WHEREAS, the Project is designed to provide multiple benefits, including improved water quality in Marsh Creek and the Sacramento San Joaquin Delta, habitat for a diversity of avian, fish, reptile and mammalian species, and recreational opportunities for the growing community of Brentwood City. These improvements will be realized by widening 4,000 linear feet of the Marsh Creek flood control channel, creating a floodplain along the low flow channel, and removing non-native and restoring native riparian and upland vegetation in a 12.5-acre Project Site. The Project will also bring much needed shade to the Marsh Creek Regional Trail, as well as a pedestrian undercrossing below Central Avenue to reduce traffic congestion and improve safety;

WHEREAS, American Rivers and the Contra Costa County Flood Control and Water Conservation District (District) are partnering to design, execute, and maintain this Project. Other Project partners include the East Bay Regional Park District, East Contra Costa County Habitat Conservancy, Friends of Marsh Creek Watershed, and the City of Brentwood. The District is overseeing implementation of the civil aspect of the project, while American Rivers is overseeing project landscaping. American Rivers has received funding from multiple sources to complete the landscaping aspect of this project.

WHEREAS, American Rivers is entering into this Agreement with Contractor for completion of Project

landscaping, including planting, irrigation, weed control, and maintenance through April 2023. Contractor, in response to the Request for Proposals, has submitted to Owner a Proposal to execute the planting, irrigation, weed control, and maintenance through April 2023. Contractor shall perform the work described in the Request for Proposals, including the Technical Specifications for the Three Creeks Parkway Restoration Project in strict accordance with the contract plans and these specifications and on the terms and conditions provided for in this Agreement and Contract Documents;

WHEREAS, the District, City of Brentwood, and DLT Ventures, LLC are the landowners of the property where the Work will take place and Contractor shall follow the stipulations of the access agreements and permits which shall be provided by American Rivers.

WHEREAS, Restoration Design Group (“Landscape Design Engineer”), developed the specifications for American Rivers and shall continue to provide technical support to the Project.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

ARTICLE I. SCOPE OF WORK

Contractor shall perform and complete all work in a good and workmanlike manner to the reasonable satisfaction of the Owner, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work, including tools, equipment, supplies, transportation, facilities, labor, superintendence, services and permits required to perform the Work; and Bonds, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor for the Work included in and covered by Owner's official award of this contract to Contractor, such award being based on the acceptance by Owner of Contractor's Proposal.

ARTICLE II. CONTRACT DOCUMENTS

The Contract Documents which comprise the agreement between Owner and Contractor, consist of this Agreement, the General Conditions, the Supplementary Conditions, Contractor’s Proposal, the Proposal Documents for Three Creeks Parkway Restoration Project including all attachments and linked documents, and the documents identified below:

- Specifications, Drawings and Modifications
- Addenda numbers
- Notice of Award
- Certificates of Insurance, Payment Bond, Performance Bond
- Notice to Proceed
- Any Modifications (as defined in General Conditions) duly delivered after execution of this Agreement
- Notices of Substantial Completion
- Notices of Final Completion and Acceptance

ARTICLE III. PAYMENT

Owner shall pay to Contractor for performance of the Work and Contractor shall accept as full compensation therefore, the sum (subject to adjustment as provided in the Contract Documents) of _____ Dollars (\$ _____) for all.

ARTICLE IV. LEGAL RELATIONSHIP OF PARTIES

Nothing in this Agreement shall be construed as constituting a partnership, joint venture, employment relationship, agent/principal relationship, or other association of any kind, between the parties hereto, and neither party shall have the power to obligate or bind the other party in any manner whatsoever

ARTICLE V. COMPLIANCE

- A. Throughout the term of the Agreement, Contractor and its subcontractors shall comply with all rules indicated Section 5.6, Compliance Requirements, of the Proposal Documents.
- B. Contractor shall comply with all federal, state and local laws, applicable statutes, Executive Orders, Office of Management and Budget circulars, and terms and conditions of the applicable source of funding for this Agreement, and regulations in effect, or reasonably expected to be in effect, including but not limited to, environmental laws and regulations, as of the date of completion of the Agreement.
- C. Owner and its auditors, as well as the auditors of the State of California, have the right to examine the records of Contractor and its subcontractors relative to the goods, services, equipment, materials, supplies or other assistance provided to Owner for the Project. Contractor shall maintain complete and accurate records of its actual Project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least three years after final disbursement by Owner. During such time, Contractor shall make said records available (or cause them to be made available) to Owner, the State of California, and its other funders for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by Owner shall be borne by Contractor. The audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

ACCEPTED AND AGREED:

American Rivers, Inc.

Contractor Name

BY _____

BY: _____

PRINTED
NAME: _____

PRINTED
NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

6.3 GENERAL CONDITIONS

6.3.1 ARTICLE I – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda –

Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the proposal documents, including drawings and specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed.

Application
for Payment –

The Project Manager-approved form used by Contractor in requesting payments, including accompanying documentation required by Contract Documents.

Proposal –

The offer or proposal of the Applicant submitted on the prescribed form setting forth the prices for the Work to be performed.

Applicant –

Any person, firm or corporation submitting a Proposal for the Work.

Proposal Documents/
Proposal Package –

The documents comprising the Request for Proposals.

Bonds –

Security, performance and payment bonds and other instruments of security, furnished by Contractor and its surety in accordance with the Contract Documents.

Change Order –

A written order to Contractor signed by Owner authorizing an addition, deletion or revision in the work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

Contract
Documents –

The Agreement, Addenda (whether issued prior to the opening of Proposals or the execution of the Agreement), Request for Proposals, Instructions to Applicants, Contractor's Bid, the Bonds, the Notice of Award, the Notice to Proceed, these General Conditions, the Supplementary Conditions, the Specifications, Drawings and Modifications.

Contract Price –	The total moneys payable to Contractor under the Contract Documents.
Contract Time –	The number of days stated in the Agreement for the completion of the work, computed as provided in these General Conditions; or the date set forth in the Agreement.
Contractor –	The person, firm or corporation with whom Owner has executed the Agreement to implement the Three Creeks Parkway Restoration Landscape Set.
Day –	A calendar day of twenty-four hours measured from midnight to the next midnight.
Design Project Manager-	Restoration Design Group (RDG). For the purposes of this Project, Erik Stromberg is RDG’s representative.
Drawings –	The drawings which show the character and scope of the work to be performed and which have been prepared or accepted by the Project Manager and are referred to in the Contract Documents.
Field Order –	A written order issued by Resident Project Manager which clarifies or interprets the Contract Documents or orders minor changes in the work but shall not change the Contract Time or Contract Price.
Implementation Staking –	Physical indicators in the field, using wooden stakes, rebar, or flagging, to indicate important points or boundaries for management actions in the Project Site.
Modification –	(13)A written amendment of the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by Project Manager, or (d) a written order for a minor change or alteration in the work issued by Resident Project Manager. A Modification may only be issued after execution of the Agreement.
Notice of Award –	The written notice by Owner to the apparent successful Applicant stating that upon compliance with the conditions precedent to be fulfilled by Applicant within the time specified, Owner will execute and deliver the Agreement to Applicant.

Notice to Proceed –

A written notice given by Owner to Contractor (with a copy to Project Manager) fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform its obligations under the Contract Documents.

Owner –

American Rivers, Inc., a nonprofit corporation.

Owner's Representative/
Resident Project

Manager -

The authorized representative of Owner or Project Manager who is assigned to the Project site or any part thereof. See also Resident Project Manager.

Planting Specifications -

Species lists and planting densities as specified by target Vegetation Type in Drawings and Specifications and the Three Creeks Parkway Restoration Landscape Set.

Project –

The entire construction to be performed as provided in the Contract Documents.

Project Manager –

The person or firm so designated in the Supplementary Conditions (SC-8). For the purposes of this Project, Amy Merrill with American Rivers is the Project Manager.

Project Partners –

Collaborating entities involved with the Project who also may be carrying out tasks and responsibilities for its success. See Section 4.2 Project Partner Roles and Responsibilities.

Resident Project
Representative –

The authorized representative of Owner or Project Manager who is assigned to the Project site or any part thereof. See also Owner's Representative.

Specifications –

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the work.

Subcontractor –

An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site, including, but not limited to, any supplier of equipment, products, materials or labor, materialman, specialty contractors, inspectors, testers.

Substantial Completion –

The date as determined by Project Manager when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such determination, the date of final completion.

Work –

Any and all obligations, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Contractor under the Contract Document, including all labor, materials, equipment and other incidentals, and the furnishing thereof.

As ordered, as directed, as required, as permitted, as allowed –

The order, directions, requirement, permission, or allowance of Owner or Project Manager is intended only to the extent of judging compliance with the Contract Documents. The terms do not imply that Owner or Project Manager has any authority or responsibility for supervision of Contractor's forces or construction means, methods, techniques or sequences of operations nor for safety in, on, or about the site, as these are the sole responsibility of the Contractor and therefore being strictly reserved for Contractor.

Reasonable, suitable, acceptable, proper, satisfactory –

The terms reasonable, suitable, acceptable, proper, and satisfactory means such to Owner or Project Manager and are intended only to the extent of judging compliance with the Contract Documents.

Understood and agreed –

Whenever in these Contract Documents the expression "it is understood and agreed" or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract Agreement.

6.3.2 ARTICLE 2 – PRELIMINARY MATTERS

Execution of Agreement:

2.1 The Agreement and other Contract Documents will be executed as set forth in the Instructions to Applicants.

Delivery of Bonds:

2.2 The required bonds shall be delivered at the preconstruction conference that shall be held within four (4) weeks before the Notice to Proceed.

Copies of Documents:

2.3 Owner shall furnish to Contractor the number of copies of the Agreement for Services in Section 5.2 as set forth in Supplementary Conditions.

Contractor's Pre-Start Representations:

2.4 Contractor represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that it has correlated its study and observations with the requirements of the Contract Documents. Contractor also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Technical Specifications – General Requirements and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents. Contractor further represents that it currently holds a valid Landscape Contractor license, which will be valid for the duration of the Project.

2.4.1 CONTRACTOR STATEMENT: Pursuant to Business and Professions Code Section 7030, Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

2.4.2 INELIGIBLE CONTRACTORS: Contractor or Subcontractor must be eligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code shall not bid on, be awarded, or perform work on this Project. No contractor shall perform work on this Project with a Subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code

Commencement of Contract Time; Notice to Proceed:

2.5 The Contract Time will commence to run on the day indicated in the Notice to Proceed; but in no event shall the Contract Time commence to run later than the tenth (10th) day following Owner's delivery of the Notice to Proceed.

Starting the Project:

2.6 Contractor shall start to perform its obligations under the Contract Documents on the date when the Contract Time commences to run. No work shall be done at the site prior to the date on which the Contract Time commences to run.

Before Starting Construction:

2.7 Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. It shall at once report in writing to Project Manager any conflict, error or discrepancy which it may discover; however, it shall not be liable to Owner or Project Manager for its failure to discover any conflict, error or discrepancy in the drawings or specifications.

2.8 Within ten (10) days after the Notice to Proceed by Owner to Contractor, Contractor shall submit to Project Manager for review, an estimated progress schedule indicating the starting and completion dates for the various stages of the Work.

6.3.3 ARTICLE 3 – CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

3.1 It is the intent of the Specifications and Drawings to describe a complete Project to be constructed in accordance with the Contract Documents. The Contract Documents comprise the entire Agreement between Owner and Contractor. They may be altered only by a Modification.

3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If Contractor finds a conflict, error or discrepancy in the Contract Documents, it shall call it to Project Manager's attention in writing at once and before proceeding with the Work affected thereby; however, it shall not be liable to Owner or Project Manager for its failure to discover any conflict, error or discrepancy in the Specifications or Drawings. Any Work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

6.3.4 ARTICLE 4 – AVAILABILITY OF LANDS AND PHYSICAL CONDITIONS

Availability of Lands:

4.1 Owner shall furnish, as indicated in the Contract Documents and not later than the date when needed by Contractor, the lands or easements upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by Owner, unless otherwise specified in the Contract Documents. If Contractor believes that any delay in Owner's furnishing these lands or easements entitles it to an extension of the Contract Time, it may make a claim therefor as provided in these General Conditions. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Unforeseen Physical Conditions:

4.2 Contractor shall promptly notify Owner and Project Manager in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents and Civil Drawings. Project Manager will promptly investigate those conditions and advise Owner in writing if further surveys or subsurface tests are necessary. Promptly after deeming such tests necessary, Owner shall obtain the necessary additional surveys and tests and furnish copies to Project Manager and

Contractor. If Project Manager finds that the results of such surveys or tests indicate that there are subsurface or latent physical conditions that differ materially from those indicated in the Contract Documents, and which could not reasonably have been anticipated by Contractor, a Change Order shall be issued incorporating the necessary revisions.

Implementation Interferences:

4.3 As used in Article 4, paragraphs 4 through 10, inclusive, the word “utility” shall be understood to include tracks, overhead or underground wires, cables, pipelines, conduits, ducts, sewers or storm drains. The term “service connection” shall be understood to mean all or any portion of a pipeline (including sewer house laterals), conduit, wire, cable or duct, including meter, between a utility distribution line and an individual customer, or customers when served by a single service connection. And the term “implementation interference” shall be understood to include any utility or service connection within the limits of excavation required for the work under the Contract as shown or as ordered by the Project Manager, or any utility or service connection located in the space which will be required by any of the work under the Contract.

In the event any utility or service connection is required to be disturbed or removed to permit construction of a pipeline or other structure under the Contract, such disturbance or removal shall be done only with the approval of the Project Manager, and following notification to the owner of the interfering utility or service connection. Any such utility or service connection removed or otherwise disturbed shall be reconstructed as promptly as possible and returned to its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of the disturbed utility. The Contractor’s responsibility under this Section to remove or replace shall apply even in the event such damage or destruction occurs after backfilling or is not discovered until after completion of backfilling. The owner of the utility or service connection shall be notified immediately after damage or destruction occurs or is discovered.

During the performance of the work under this Contract, the owner of any utility affected by the work shall have the right to enter when necessary upon any portion of the work site for the purpose of maintaining service and for making changes in or repairs to said utility.

The Civil Drawings will be made available to the Contractor and these drawings show the approximate positions of known utilities in the immediate vicinity of the work, but neither the Owner nor the Project Manager guarantee that all existing utilities are shown, nor that the locations are accurate. Service connections normally are not shown on the Drawings. The Contractor shall call Underground Service Alert (USA) forty-eight (48) hours prior to commencing any excavation, and shall ascertain from records or otherwise, the existence, horizontal and vertical position, and ownership of all existing utilities and service connections. If the Contractor discovers any utility in the line of the work that is not shown on the Drawings, it shall immediately notify the Project Manager of the utilities’ existence. The Owner shall not be liable for any consequences arising from a service connection being incorrectly located in the field by the agency having jurisdiction over said service connection.

The Owner reserves the right, upon determination of the actual position of existing utilities and service connections, to make changes in alignment or grade of the Owner’s facilities when, by so doing, the

necessity for relocation of existing utilities or service connections will be avoided. The Project Manager will order such changes in writing. Where applicable, adjustment in the Contract price will be on the basis of the unit prices stated in the Proposal Schedule. Where unit prices in the Proposal Schedule are not applicable, adjustment in Contract price will be in accordance with Article 11.

6.3.5 ARTICLE 5 - BONDS AND INSURANCE

Performance, Payment or Other Bonds:

5.1 Contractor shall furnish a 100% Performance Bond, 100% Payment Bond and other bonds specified in the Instructions to Applicant as security for the faithful performance and payment of all its obligations under the Contract Documents. Bonds shall be issued by such sureties as are licensed to conduct business in the state where the Project is located and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The surety shall have an "A" minimum rating of performance and a financial rating strength of five times the Contract Price, all as stated in current "Best's Key Rating Guide, Property Liability". Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety and certified to include the date of the Bond.

5.2 If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located is revoked, Contractor shall within five (5) days thereafter substitute another Bond and surety, both of which shall be acceptable to Owner.

Contractor's Liability Insurance:

5.3 Contractor shall purchase and maintain such insurance (see Supplementary Condition 3 (SC-3)) as will protect it from claims under workmen's compensation laws, disability benefit laws or other similar employee benefit laws from claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by personal injury liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom - any or all of which may arise out of or result from Contractor's operations under the Contract Documents, whether such operations be by itself or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the specific coverages and be written for not less than any limits of liability and maximum deductibles specified in the Supplementary Conditions or required by law, whichever is greater, shall include contractual liability insurance and shall include the additional insured parties as named in the Supplementary Conditions (SC-3.02). Before starting the Work, Contractor shall file with Owner and Project Manager certificates of such insurance, acceptable to Owner; these certificates shall contain a provision that the coverage afforded under the policies will not be cancelled or materially changed until at least fifteen (15) days prior written notice has been given to Owner.

6.3.6 ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1 Contractor shall supervise and direct the Work efficiently and with its best skill and attention. It shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but it shall not be solely responsible for the negligence of others in the design. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents and is satisfactory to Owner.

6.2 Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to Owner and Project Manager except under extraordinary circumstances. The Superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

Labor, Materials and Equipment:

6.3 Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. It shall at all times maintain good discipline and order at the site.

6.4 Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

6.5 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. If required by Project Manager, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.6 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

Wherever an item is specified by brand, trade name, species, including subspecies and variety, or specific concern, the item must be provided as specified unless Contractor obtains prior written approval from Project Manager.

6.7 Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any obligation, contractual or otherwise by Owner, Design Project Manager or Project Manager toward any Subcontractor, their employees or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of Owner, Design Project Manager or Project Manager to pay or to see to the payment of any moneys due any Subcontractor, employee or employees unions or trust fund or other person or organization, except as may otherwise be required by law. Owner or Project

Manager may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done in accordance with the schedule of values.

6.8 The division and sections of the Specifications and the identification of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

6.9 Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner, Project Manager and Design Project Manager, including but not limited to 5.3 Insurance and 6.22, 6.23, 6.24.

6.10 All Work performed for Contractor by a Subcontractor shall be pursuant to an appropriate agreement between Contractor and the Subcontractor which shall contain provisions that waive all rights, including, but not limited to rights of subrogation, the contracting parties and insurers may have against one another and Owner, Project Manager and Design Project Manager for damages caused by fire or other perils covered by insurance, except such rights as they may have to the proceeds of such insurance. Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor.

Patent Fees and Royalties:

6.11 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Project Manager its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents. Contractor shall indemnify and hold harmless Owner, Project Manager and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

6.12 Contractor shall obtain and pay for all construction permits and licenses if any are necessary, shall comply with the terms of all permits (including encroachment permits), and shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of its Proposal. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall also pay all public utility charges.

Laws and Regulations:

6.13 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If Contractor observes that the Specifications or Drawings are at variance therewith, it shall give Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If Contractor performs any Work contrary to such laws, ordinances, rules and regulations it shall bear all costs arising therefrom including Owners internal cost, cost for additional engineering services, testing and observations; however, it shall not be its primary responsibility to make

certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

Prevailing Wages and Payroll Records:

6.14 In accordance with the provisions of Section 1770 et. seq. of the California Labor Code, the general prevailing wage rates of Contra Costa County shall be applicable to the work.

The Contractor shall comply with the provisions of Section 1775 of the California Labor Code, one of which is that the Contractor shall forfeit as penalty up to \$50 for each calendar day or portion thereof for each workman, whether employed by the Contractor or Subcontractor, paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the California Labor Code and, in particular, Sections 1770 to 1780, inclusive.

The Owner will not recognize any claim for additional compensation because of the payment by the Contract or any wage rate in excess of the prevailing wages set forth in the Contract Documents. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its Proposal, and will not under any circumstances be considered as the basis of a claim against the Owner on the Contract.

Section 1776 of the Labor Code enumerates certain requirements concerning the Contractor's and subcontractor's payroll records. This section stipulates that responsibility for compliance shall be fixed upon the Contractor. Payroll records shall be maintained, be available for inspection and copies furnished to the Owner upon request and in accordance with Section 1776, and in the event of noncompliance with the requirements, the Contractor is subject to the penalties as described in Section 1776.

Contractor and its subcontractors shall be registered with the Department of Industrial Relations (DIR) and have paid its annual fee. The contractor must post all job site notices required by regulation. This project is subject to compliance monitoring and enforcement by DIR.

This is a public works project and the contractor's and all subcontractors' employees must be provided certain benefits pursuant to Section 1720 et seq. of the Labor Code, including the payment of prevailing wage rates, if DIR has established prevailing wage rates for the work. The Owner has obtained from the Director of the Department of Industrial Relations the prevailing wage rates applicable to the work. Copies are on file at the Owner's office. The contractor is responsible for determining which wage classifications are applicable to this project. Contractor may also obtain them at the DIR website: <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>

Taxes:

6.15 Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by it in accordance with the law of the place where the Work is to be performed.

Use of Premises:

6.16 Contractor shall confine its equipment, the storage of materials and equipment and the operations of its workmen to areas permitted by law, ordinances, permits or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment.

6.17 Contractor shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall it subject any part of the Work to stresses or pressures that will endanger it.

Record Drawings:

6.18 Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Planting Specifications at the site in good order and annotated to show all changes made during the construction process. These shall be available to Project Manager and shall be delivered to it for Owner upon completion of the Project. (Note: Further provisions in respect of such record drawings are included in the Technical Specification— - General Requirements.)

Safety and Protection:

6.19 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. It shall take all necessary precautions for the safety in, on and about the site, and shall provide the necessary protection to prevent damage, injury or loss to:

6.19.1 all employees, guests and visitors to the site and other persons or members of the public who may be affected thereby.

6.19.2 all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and

6.19.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. It shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for its safety and protection. It shall notify Owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied and paid for by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Project Manager has issued a notice to Owner and Contractor in accordance with Supplementary Conditions that the Work is acceptable.

6.20 Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to Owner.

Emergencies:

6.21 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instructions or authorization from Project Manager or Owner, is

obligated to act, at its discretion, to prevent threatened damage, injury or loss. Contractor shall give Project Manager and Resident Project Manager prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereto, and a Change Order shall thereupon be issued covering the changes and deviations involved. If Contractor believes that additional work done by it in an emergency which arose from causes beyond its control entitles it to an increase in the Contract Price or an extension of the Contract Time, it may make a claim therefor.

Indemnification:

6.22 (a) Contractor promises to and shall defend, indemnify, save, and hold harmless the indemnitees from the liabilities as defined in this section.

(b) The indemnitees benefitted and protected by this promise are American Rivers, Inc., the Contra Costa County Flood Control & Water Conservation District, Contra Costa County, City of Brentwood, DLT Ventures, LLC, East Bay Regional Park District, and the State of California, and their respective elective and appointive boards, commissions, officers, agents and employees.

(c) The liabilities protected against are any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses, or liabilities arising out of or in connection with the actions defined below for personal injury, sickness, disease, emotional injury, death, property damage (including loss of use), trespass, nuisance, inverse condemnation, patent infringement, or any combination of these, regardless of whether or not such liability, claim, or damage was foreseeable at any time before American Rivers approved the improvement plans or accepted the improvements as complete, and including the defense of any suit(s) or action(s) at law or equity concerning these.

(d) The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this contract and attributable to Contractor, subcontractor(s), supplier(s), trucker(s), anyone for whose acts Contractor may be liable, or any officer(s), agent(s), or employee(s) of one or more of them.

(e) The promise and agreement in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s), drawing(s), specification(s), or special provision(s) in connection with this work or has insurance or other indemnification covering any of these matters.

(f) Except as prohibited by Civil Code section 2782, Contractor's obligations under this section shall exist regardless of the existence or degree of fault of American Rivers or any other indemnitee.

(g) Contractor's obligations under this section shall extend to claims arising after the work is completed and accepted if the claims are related to alleged acts or omission that occurred during the course of the work. American Rivers' inspection is not a waiver of full compliance with these requirements.

(h) Contractor and Contractor's insurance carrier(s) shall respond within fifteen (15) days to the tender of any claim for defense and indemnity by an indemnitee, unless this time has been extended by the indemnitee.

(i) With respect to third-party claims against Contractor, Contractor waives all rights of any kind to express or implied indemnity against the indemnitees.

(j) Nothing in this section is intended to establish a standard of care owed to any third party or to extend to any third party the status of third-party beneficiary.

(k) Contractor shall pay all attorney's fees and cost of Owner, and Project Manager to enforce this and any indemnity provision in this Agreement

6.23 In any and all claims against Owner or Project Manager or any of their agents or employees by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workman's compensation acts, disability benefit acts or other employee benefit acts.

6.24 The indemnification obligation of Contractor shall extend to the fullest extent permissible under California law.

6.25 As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract exceeds \$25,000 and involves trench excavation five (5) feet or more in depth, the Contractor shall submit for acceptance by a registered Civil or Structural Engineer representing the Owner, in advance of excavation, a detailed Drawing showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. Drawings shall be furnished at least five (5) days before the Contractor intends to begin trench work. If such Drawing varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, a registered Civil or Structural Engineer shall prepare the Drawing.

Nothing in this Section shall be deemed to allow the use of a shoring, sloping or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the Owner, the Project Manager, or any of their consultants, directors, officers, agents or employees.

6.3.7 ARTICLE 7 - WORK BY OTHERS

7.1 Owner may perform additional work related to the Project by itself, or it may let other direct contracts therefore which shall contain General Conditions similar to these. Contractor shall afford the other Contractors who are parties to such direct contracts, (or Owner if it is performing the additional work itself) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate its Work with theirs.

7.2 Coordination with Volunteers – Contractor shall coordinate with Owner to enable local volunteers to participate in plant maintenance, weeding, and/or other activities to forward Project goals in ways that

are productive for the Project. Resident Project Manager and/or Project Manager will coordinate with Contractor on location, activity, and timing for which such volunteer efforts can best be directed. Resident Project Manager, Project Manager or another Contractor will provide training and oversight for volunteers.

7.3 If any part of Contractor's Work depends for proper execution or results upon the work of any such other Contractor (or Owner), Contractor shall inspect and promptly report to Project Manager in writing, any defects or deficiencies in such work that render it unsuitable for such proper execution and results. Its failure to so report shall constitute an acceptance of the other work as fit and proper for the relationship of its Work except as to defects and deficiencies which may appear in the other work after the execution of its Work.

7.4 Contractor shall do all cutting, fitting and patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Project Manager and of the other Contractors whose work will be affected.

7.5 If the performance of additional work by other Contractors or Owner is not noted in the Contract Documents prior to the execution of the contract, written notice thereof shall be given to Contractor starting any such additional work. If Contractor believes that the performance of such additional work by Owner or others involves it in additional expense or entitles Contractor to an extension of the Contract Time, it may make a claim therefore.

6.3.8 ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 Owner shall issue all communications to Contractor through Project Manager.

8.2 In case of termination of the employment of Project Manager, Owner shall appoint a Project Manager against whom Contractor makes no unreasonable objection, whose status under the Contract Documents shall be that of the former Project Manager. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 Owner shall furnish the data required of it under the Contract Documents promptly after they are due.

8.4 In addition to its rights to request changes in the Work, Owner shall be obligated to execute Change Orders therefore.

6.3.9 ARTICLE 9 – RESIDENT PROJECT MANAGER'S STATUS DURING IMPLEMENTATION

Owner's Representative:

9.1 Resident Project Manager will be Owner's representative during the implementation period. The duties and responsibilities and the limitations of authority of Resident Project Manager as Owner's representative during implementation are set forth in the agreement between Owner and Resident

Project Manager and such authority does not include the right or obligation to advise, direct or review Contractor's means, methods, sequences or techniques of implementation nor safety in, on or about the site as these are solely Contractors responsibilities. The duties and responsibilities and the limitations of authority of Design Project Manager, during construction are set forth in the agreement between Owner and Design Project Manager and such authority does not include the right or obligation to advise, direct or review Contractor's means, methods, sequences or techniques of construction nor safety in, on or about the site as these are solely Contractors responsibilities.

Clarifications and Interpretations:

9.2 Resident Project Manager will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as it may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification and interpretation entitles Contractor to an increase in the Contract Price, it may make a claim therefore.

Rejecting Defective Work:

9.3 Resident Project Manager will have authority to reject Work which is "defective" (which term is hereinafter used to describe Work that is unsatisfactory, faulty or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Specifications, or has been damaged prior to Resident Project Manager's recommendation of final payment). It will also have authority to require special inspections or testing of the Work whether or not the Work is fabricated, installed or completed.

Decisions on Disagreements:

9.4 Resident Project Manager will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder. In their capacity as interpreter and judge they will exercise their quasi-judicial efforts to ensure faithful performance by both Owner and Contractor. They will not show partiality to either and will not be liable for the results of any interpretation or decision rendered in good faith. Claims, disputes and other matters relating to the execution and progress of the Work or the interpretation of or performance under the Contract Documents shall be referred to Project Manager for decision: which it will render in writing within a reasonable time.

9.5 In an effort to resolve any conflicts that arise during the implementation of the Project or following the completion of the Project, Owner and Contractor agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

In addition, if mutually agreed upon, any controversy or claim arising out of or relating to this Agreement or the breach thereof may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

Owner and Contractor further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their

subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

Limitations on Responsibilities:

9.6 The authority of Resident Project Manager or Project Manager to act under this article or elsewhere in the Contract Documents nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Project Manager to Contractor, any Subcontractor, any material man, fabricator, supplier or any of their agents or employees or any other person performing any of the work.

9.7 Resident Project Manager, Project Manager, Owner, and Design Project Manager shall not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and they will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.8 Resident Project Manager, Project Manager, nor Owner, and Design Project Manager shall not be responsible for the acts or omissions of Contractor, or any Subcontractors, or any of its or their agents or employees or any other persons at the site or otherwise performing any of the Work.

6.3.10 ARTICLE 10 - CHANGES IN THE WORK

10.1 Without invalidating the Agreement, Owner may, at any time or from time to time, order additions, deletions or revisions in the Work: these will be authorized by Change Orders. Upon receipt of an approved Field Order or Change Order, Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in these General Conditions on the basis of a claim made by either party.

10.2 Field Orders may authorize minor changes or alterations in the Work not involving a change in the Contract Price or Contract Time and not inconsistent with the overall intent of the Contract Documents. If Contractor believes that any change entitles Contractor to an increase in the Contract Price or an extension of the Contract Time, it shall make a claim for a Change Order before proceeding with the work.

10.3 Additional Work performed by Contractor without authorization of a Change Order will not entitle Contractor to an increase in the Contract Price or an extension of the Contract Time, except as otherwise provided herein.

10.4 Owner, through its Project Manager, shall review Field Orders and Change Orders prepared by Owner's Resident Project Manager covering changes in the Work to be performed within ten (10) days or less unless additional time is necessary for further supporting data. Approved Change Orders will be accompanied by an amendment to the Agreement for Services.

10.5 It is Contractor's responsibility to notify its Surety of any changes affecting the general scope of the Work or Change in the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly.

6.3.11 ARTICLE 11-CHANGE OF CONTRACT

11.1 The Contract Price constitutes the total compensation payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to Owner before or within five (5) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered at the same time unless Project Manager allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by Design Project Manager if Owner and Contractor cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

11.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

11.3.2 Where the Work involved is covered by a lump sum contained in the Contract Documents, by application of the lump sum to the item(s) involved, or by mutual acceptance of a lump sum.

11.3.3 On the basis of the Cost of Work, plus a Contractor's Fee for overhead and profit (determined in accordance with the following paragraph).

Cost of the Work:

11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include the following items.

11.4.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Sunday or legal holidays shall be included in the above to the extent authorized by Owner.

11.4.2 Cost of all materials and equipment furnished incorporated in the Work, including costs of transportation and storage thereof, and manufacture's field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to Owner and Contractor shall make provisions so that they may be obtained.

11.4.3 Payments made by Contractor to the Subcontractors for Work performed by Subcontractors. Contractor shall seek Owner's prior written approval of the weed management advisor and/or pesticide applicator whether carried out by one subcontractor or two. If required by Owner, Contractor shall obtain competitive Proposals from Subcontractors acceptable to Contractor and shall deliver such Proposals to Owner who will then determine with the advice of Design Project Manager, which Proposals will be accepted. If a Subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as Contractor's Cost of Work. All Subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4 Cost of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers and accountants) reasonably required and employed for services specifically related to the Work.

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportions of necessary transportation, traveling and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

11.4.5.2 Costs, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, which are consumed in the performance of the Work, and costs less market value of such items used but not consumed which remain the property of the Contractor.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Project Manager, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with items of said rental agreement. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

11.4.5.4 Sales, use or similar taxes related to the Work, and for which Contractor is liable, imposed by any governmental authority.

11.4.5.5. Deposits lost for causes other than Contractor's negligence, royalty payments and fees for permits and licenses.

11.4.5.6 The Cost of utilities, fuel and sanitary facilities at the site.

11.4.5.7 Minor expenses such as telegrams, mobile telephone or roaming charges, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.8 Cost of premiums for additional bonds and insurance required because of changes in the Work.

11.5 The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the site or in its principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classification— - all of which are to be considered administrative costs covered by the Contractor's Fee.

11.5.2 Expenses of Contractor's principal and branch office other than its office at the site.

11.5.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

11.5.4 Cost of premiums for all bonds and for all insurance policies whether or not Contractor is required by the Contract Documents to purchase and maintain the same (except as otherwise provided above).

11.5.5 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in the cost of the Work.

11.5.7 Losses, damages and expenses, not compensated by insurance or otherwise, sustained by Contractor in connection with the execution of, and to the Work, provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and Contractor is placed in charge thereof, it shall be paid for its services a fee proportionate to that stated under Contractor's Fee.

11.6 Whenever the cost of any Work is to be determined pursuant to preceding paragraphs, Contractor will submit in form prescribed by Project Manager an itemized cost breakdown together with supporting data.

Deleted Work:

11.7 When work is deleted, where the work does not frustrate the completion of the project as a whole but merely deletes items subsequently found unnecessary to the Work, the estimated costs of such uncompleted work shall also be deleted. Owner reserves the right to delete any portion of the Work without constituting grounds for any claim by Contractor for payment or allowance for damages.

6.3.12 ARTICLE 12 - CHANGE OF THE CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to Project Manager and Resident Project Manager promptly and not later than five (5) days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered promptly and not later than ten (10) days of such occurrence unless Owner allows an additional period of time to ascertain more accurate data. Owner shall determine all claims for adjustment in the Contract Time if Project Manager and Contractor cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2 The Contract Time will be extended in an amount equal to time lost, on the critical path, due to delays beyond the control of Contractor if it makes a claim therefore as provided in the preceding paragraph. Such delays shall include, but not be restricted to fires, floods, labor disputes, epidemics, abnormal weather conditions, or any other similar event beyond the Contractor's reasonable control. American Rivers recognizes that the COVID-19 pandemic may potentially have impacts on the implementation schedule. American Rivers will coordinate those impacts with the selected Contractor. Contractor and its Subcontractors shall, at all times take all reasonable steps within their respective powers and consistent with best practices (but without incurring unreasonable additional costs) to:

- (a) prevent such delays affecting the performance of the Contractor's obligations under this Agreement;
- (b) mitigate the effect of any delay; and
- (c) comply with its obligations under this Agreement.

12.3 All time limits stated in the Contract Documents which require performance by the Contractor are of the essence of the Agreement. The provisions of this article shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

12.4 To the fullest extent allowed by California law, no claim for damages or any claim other than for an extension of time shall be made or asserted against Owner, Project Manager, or Design Project Manager by reason of any delays caused by Owner, Project Manager, or Design Project Manager. Contractor is on notice that reasons for such delays can include the inability to obtain permits, rights-of-way, or other authorizations from other private or governmental entities. The Contractor shall not be entitled to an increase in the contract sum or payment or compensation of any kind from the Owner, Project Manager,

or Design Project Manager for any direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided however that this provision shall not preclude recovery of damages by the Contractor from Owner for hindrances or delay due solely to the active negligence of the Owner, Project Manager, or Design Project Manager. Otherwise, the Contractor shall be entitled only to extensions of the contract time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided for above.

6.3.13 ARTICLE 13 - WARRANTY AND GUARANTEE, TESTS AND INSPECTIONS, CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee:

13.1 Contractor warrants and guarantees to Owner that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests or approvals referred to in the Tests and Inspection paragraph. All unsatisfactory Work, all faulty or defective Work, and all work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests or approvals, shall be considered defective. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this article.

Tests and Inspections:

13.2 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by some public body, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Owner the required certificate of inspection, testing or approval. All other inspections, tests and approvals required by the Contract Documents shall be performed by organizations acceptable to Owner and Contractor and the costs thereof shall be borne by Owner unless otherwise specified.

13.3 Contractor shall give Resident Project Manager timely notice of readiness of the Work for all inspections, tests or approvals. Contractor shall also provide As-Built Plans for Work to include Tasks 1-4 as well as the additives added to the Work pursuant to the Contract Documents. If any such Work required so to be inspected, tested or approved is covered without written concurrence of Resident Project Manager, it must, if requested by Resident Project Manager, be uncovered for observation, and such uncovering shall be at Contractor's expense unless Contractor has given Resident Project Manager timely notice of its intention to cover such Work and Project Manager has not acted with reasonable promptness in response to such notice.

13.4 Neither observations by Resident Project Manager nor inspection tests or approvals by person other than Contractor shall relieve Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.

Access Work:

13.5 Owner and its representative and other Project Partners will at reasonable times have access to the Work. Contractor shall provide proper and safe facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

Uncovering Work:

13.6 If any Work is covered contrary to the written request of Project Manager, it must, if requested by Project Manager be uncovered for its observations and replaced at Contractor's expense.

13.7 If any Work has been covered which Owner has not specifically requested to observe prior to its being covered, or if Owner considers it necessary or advisable that covered work be inspected or tested by others, Contractor, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, Contractor shall bear all the expense of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, if it makes a claim therefore.

Owners May Stop the Work:

13.8 If the Work is defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, or if Contractor fails to make prompt payments to Subcontractors or for labor, materials or equipment, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated: however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party.

Correction or Removal of Defective Work:

13.9 If required by Design Project Manager prior to its recommendation of final payment, Contractor shall promptly, without cost to Owner and as specified by Design Project Manager, either correct any defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by Design Project Manager, remove it from the site and replace it with nondefective Work. If Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from Design Project Manager, Owner may have the deficiency corrected or the rejected Work removed and replaced. Contractor shall pay all direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. Contractor shall also bear the expense of making good all Work of others destroyed or damaged by its correction, removal or replacement of its defective Work.

Correction Period:

13.10 If, after final payment and prior to the expiration of one year after the date of Substantial Completion the Work, (unless a longer period is set forth in Supplementary Conditions) or such longer period of time as may be allowed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such defective Work or, if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instructions, Owner may have the defective Work corrected or the rejected Work removed and replaced, and Contractor shall pay all direct and indirect costs of such removal and replacement, including compensation for additional professional services.

Acceptance of Defective Work:

13.11 If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to final payment, also Design Project Manager) prefers to accept it, it may do so. In such case, if acceptance occurs prior to final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after final payment, Contractor shall pay an appropriate amount to Owner.

Neglected Work by Contractor:

13.12 If Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, Owner, after seven(7) days written notice to Contractor may, without prejudice to any other remedy it may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against Contractor if Design Project Manager agrees with such action, in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

6.3.14 ARTICLE 14 - PAYMENTS AND COMPLETION

Application for Progress Payments:

14.1 By the 15th of every January, April, July, and October, beginning with January 2021, Contractor shall submit to Project Manager invoices signed by the Contractor covering the Work completed during the past quarter and accompanied by a brief, bulleted Progress Report on the work completed to-date and planned for the next payment period.

Contractor's Warranty of Title:

14.2 Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

Review of Application for Payment:

14.3 Owner will, within seven days after receipt of each Invoice and Progress Report, either recommend payment, or return the Application to Contractor indicating in writing its reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Invoice. Owner shall within sixty (60) days, which does not include the ten-day review period, after receipt of an undisputed and properly submitted Invoice, pay Contractor the amount.

Owner will retain from each progress payment not less the retainage amount stipulated in SC-12 of the Supplementary Conditions of the estimated value of work done and materials and equipment furnished. Amounts retained will not be paid to the Contractor until the time of final payment and release on the Contract.

14.4 Project Manager's recommendation of any payment requested in an Application of Payment will constitute a representation to Owner, based on Resident Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on its review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in its recommendation); and that Contractor is entitled to payment of the amount indicated. However, by recommending any such payment, Project Manager will not thereby be deemed to have represented that it made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work, or that it has reviewed the means, methods, techniques, sequences, and procedures of construction, or that it has made any examination to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to Contractor on account of the Contract Price, or that title to any Work, materials or equipment has passed to Owner free and clear of any Liens.

14.5 Project Manager's recommendation of final payment will constitute an additional representation to Owner that the conditions precedent to Contractor's being entitled to final payment have been fulfilled.

14.6 Project Manager or Resident Project Manager may refuse to recommend the whole or any part of any payment if, in its opinion, it would be incorrect to make such recommendation to Owner. It may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the result of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in its opinion to protect Owner from loss because:

14.6.1 the work is defective, or completed Work has been damaged requiring correction or replacement.

14.6.2 claims or Liens have been filed or there is reasonable cause to believe such may be filed.

14.6.3 the Contract Price has been reduced because of Modifications.

14.6.4 Owner has been required to correct defective Work or complete the Work in accordance with paragraphs 13.11 or

14.6.5 of unsatisfactory prosecution of the Work, including failure to furnish acceptable submittals or to clean up.

Application for Final Payment

14.7 Upon written notice from Project Manager that Work is completed and acceptable as provided in Supplementary Conditions, Contractor shall make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all other documents called for in the Contract Documents and such other data and schedules as Project Manager may reasonably require.

Final Payment/Notice of Completion

14.8 If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Application for Payment - all as required by the Contract Documents, Project Manager, Design Project Manager, and District Representative are satisfied that the Work has been completed and Contractor has fulfilled all of its obligations under the Contract Documents, it will, within seven (7) days after receipt of the final Application for Payment, indicate in writing its recommendation of payment and present the Application to Owner for payment. Thereupon Project Manager will give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of the paragraph regarding waiver of claims. Otherwise, it will return the Application to Contractor, indicating in writing its reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Assuming Project Manager has recommended final payment of Contractor to Owner, Owner shall pay Contractor within thirty (30) days after Owner receives the final payment request.

Release of Retention:

14.9 Retention proceeds withheld from any payment by the Owner from the Contractor, shall be subject to the following provisions:

14.9.1 Within sixty (60) days after the date of completion of the Work, the retention withheld by the Owner shall be released. In the event of a dispute between Owner and the Contractor, Owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this section, "completion" means any of the following:

14.9.1.1 The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the Owner, or its agent, accompanied by cessation of labor on the work of improvement.

14.9.1.2 The acceptance by the Owner, of the Work.

14.9.1.3 After the commencement of Work, a cessation of labor on the Work for a continuous period of one hundred (100) days or more, excluding work periods Owner has

otherwise excluded the Contractor from working, due to factors beyond the control of the Contractor.

14.9.1.4 After the commencement of Work, a cessation of labor on the work of improvement for a continuous period of thirty (30) days or more, if the Owner files for record a notice of cessation or a notice of completion.

14.10 If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of Contractor, and Project Manager so confirms, Owner shall, upon certification by Project Manager and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance of Work not fully completed or corrected is less than the retainage stipulated in the Supplementary Conditions, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Manager prior to certification of such payments. Such payments shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Contractor's Continuing Obligations:

14.11 Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Owner, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the project or any part thereof by Owner, nor any act of acceptance by Owner nor any failure to do so, nor any correction of defective work by Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

Waiver of Claims:

14.14 Final payment shall only be made after the Contractor has executed a written release of all claims against the Owner arising by virtue of the Contract. Such a release must comply with Civil Code Section 3262, an example of which appears below. In executing the release on the Contract, the Contractor may state as an exception any claim in a definite amount, furnished to the Owner and Project Manager in accordance with Article 11.

14.15 The release of Contract shall be in substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON
FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished
to American Rivers, Inc.
(Owner)

on the job of Three Creeks Parkway Restoration Project located in Brentwood, California.

and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a
labor and material bond on the job, except for disputed claims for extra work in the amount of

\$ _____.

Dated: _____
(Contractor)

By: _____
(Name and Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID
FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF
YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

6.3.15 ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

Owner May Suspend Work:

15.1 Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor and Project Manager which shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if it makes a claim therefor as provided in these General Conditions.

Owner May Terminate

15.2 If Contractor is adjudged a bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if it repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if it disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if it disregards the authority of Project Manager or Resident Project Manager, or if it otherwise violates any provision of the Contract Documents, then Owner may, without prejudice to any other right or remedy and after giving Contractor and its Surety seven (7) days written notice, terminate the service of Contractor and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor, AND finish the Work by whatever method it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs incurred by Owner shall be incorporated in a Change Order.

15.3 Where Contractor's services have been so terminated by Owner, said termination shall not affect any rights of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys by Owner due Contractor will not release Contractor from liability.

15.4 Upon thirty (30) days written notice to Contractor, Owner may, without cause and without prejudice to any other rights or remedy, elect to abandon the Project and terminate the Agreement. In such case, Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit on only the Work performed and not on unperformed Work.

15.5 Should the primary source(s) of funding for this Project funding be reduced, deleted or delayed by the federal or state budget process or other budget control actions, and the work under these Contract Documents is canceled or suspended, American Rivers shall provide written notice to Contractor and be liable for any work completed pursuant to the Contract Documents up to the date of receipt of the written notice and shall have no liability for payment for work undertaken after such date..

Contractor May Stop Work or Terminate:

15.5 If, through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) days by Owner, or under an order of court or other public authority, or Project Manager fails to act on any Application for Payment within sixty (60) days after it is submitted, or Owner fails to pay Contractor any sum recommended by Project Manager or awarded by arbitrators within thirty (30) days of its approval and presentation, then Contractor may, upon fifteen (15) days written notice to Owner and Project Manager, terminate the Agreement and recover from Owner payments for all Work executed and any expense sustained plus a reasonable profit on only the Work performed and not on unperformed Work. In addition and in lieu of terminating the Agreement, if Project Manager has failed to act on an Application for Payment or Owner has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to Owner and Project Manager, stop the Work until it has been paid all amounts then due.

6.3.16 ARTICLE 16 – INTENTIONALLY LEFT BLANK

6.3.17 ARTICLE 17 – INTENTIONALLY LEFT BLANK

6.3.18 ARTICLE 18 - MISCELLANEOUS

Giving Notice:

18.1 Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to it who gives the notice.

18.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

General:

18.3 All Specifications, Drawings and copies thereof furnished by Design Project Manager shall remain its property. They shall not be used on another Project, and, with the exception of those sets which have been signed in connection with the execution of the Agreement, shall be returned to it on request upon completion of the Project.

18.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor and the rights and remedies available to Owner and Design Project Manager hereunder shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.

18.5 Should Owner or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other or of any of its employees or agents or others for whose acts it is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

18.6 The Contract Documents shall be governed by the law of the place of the Project.

18.7 Assignments: Performance of the Contract shall not be assigned in whole or in part without written consent of the Owner.

6.4 SUPPLEMENTARY CONDITIONS

5.4.1 SC-1. COUNTERPARTS OF THE AGREEMENT.

Owner shall furnish to Contractor two copies of the Agreement for Services in Section 5.2. Contractor shall execute the Agreement for Services, insert executed copies of the required bonds and power of attorney, and submit all copies to Owner. Owner shall execute all copies, and Project Manager shall review and return one fully executed copy Contractor.

6.4.2 SC-2. INTENTIONALLY LEFT BLANK

6.4.3 SC-3. INSURANCE REQUIREMENTS FOR CONTRACTOR.

SC-3.01 Insurance Requirements. The Contractor shall, at its sole cost, obtain and maintain, in force and effect for the duration of the Contract, including the Guarantee and Warranty periods, insurance of the following types with limits not less than those set forth below, in a company or companies with a Best's rating of no less than A:VII and admitted to issue insurance in the jurisdiction(s) in which all work is to be performed, where the site is located and where any waste is transported or deposited. The Contractor shall require compliance with these Insurance Requirements by its lower tier subcontractors.

- Workers' Compensation insurance in the maximum amounts as required by the Labor Code of the State of California, with Employer's Liability of no less than \$1,000,000;
- Professional Errors and Omissions insurance in the amount of \$1,000,000 Aggregate;
- Pollution insurance in the amount of \$2,000,000 Aggregate;
- Automobile Liability with bodily injury limits of at least \$1,000,000.00 per accident;
- Commercial Excess Liability or Umbrella coverage with a limit of \$3,000,000 or greater.
- Commercial General Liability (CGL) insurance which shall include:

(a) a minimum combined single limit of liability of \$2,000,000 or the limits required by law, whichever is greater for each occurrence for bodily injury and property damage;

(b) a minimum limit of liability of \$2,000,000 each person for personal and advertising injury liability;

(c) a minimum limit of liability of \$2,000,000 each occurrence for products/completed operations liability. The products/completed operations liability shall be maintained in full force and effect for not less than 10 years following completion of any of the Contractor's work;

(d) a general aggregate limit of not less than \$2,000,000, which shall be provided on a per project basis;

(e) XCU coverage for claims arising from explosion, collapse and underground damage;

(f) Accidental spillage, cleanup and other related costs;

- Course-of-construction (also known as "Builder's Risk") insurance covering all risks of loss in the amount of the completed value of the project with no coinsurance penalty provisions. (Any proceeds of loss payable under this coverage shall be used to replace, rebuild or repair the damaged portions of the facilities and structures constructed under this agreement.)

(a) A minimum limit of liability in the amount of the initial Contract Price as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles;

(b) Coverage for the Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, the Contractor shall bear all reasonable costs properly attributable thereto;

(c) Coverage against the perils of fire and extended coverage and all physical loss or damage including, without limitation or duplication of coverage:

(i) lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike, civil commotion, aircraft and vehicles;

(ii) theft, vandalism, malicious mischief, and water damage;

(iii) collapse, flood including tidal waves or overflow from bodies of water, landslide, water pressure or earth movement and earthquake;

(iv) removal of debris resulting from an insured loss and demolition occasioned by enforcement of any applicable legal requirements;

(v) falsework, temporary buildings and safety devices used by the Contractor to perform the Work;

(vi) portions of the Work stored on and off the site and in transit when such portions of the Work are included in an Application for Payment;

(vii) and shall cover compensation for the services of the Project Manager required as a result of the insured loss.

Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by first class mail has been given to the Owner; or in the event of cancellation of coverage due to nonpayment, after ten (10) days prior written notice to the Owner. Contractor shall notify the Owner within two (2) days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten (10) days before an insurance policy held by Contractor lapses or is cancelled, Contractor shall provide the Owner with evidence of renewal or replacement of the policy.

For any claims related to this agreement, the Contractor's insurance coverage shall be primary insurance as respects the additional Insureds or their officers, agents and employees, and not excess to any insurance or self-insurance of the State of California. The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.

Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current AM Best Co. rating no lower than A- or better.

Verification of Coverage. The Contractor shall furnish American Rivers 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 Executive Officer before work commences. American Rivers may require, at any time, complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

Waiver of Subrogation. The Contractor hereby grants to American Rivers, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the Contractor may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. American Rivers agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.

Deductibles, Premiums, and Self-Insured Retentions. Any deductibles or self-insured retentions must be paid by Contractor. American Rivers will not be responsible for any premiums or assessment on the policy.

SC-3.02 Certificates of Insurance and Additional Insureds.

Prior to beginning any Work, the Contractor shall file with the Owner, Certificates of Insurance in a form satisfactory to Owner along with a copy of all endorsements as required in Article 5.3. The certificates shall name American Rivers, Inc., the Contra Costa County Flood Control & Water Conservation District, Contra Costa County, City of Brentwood, DLT Ventures, LLC, East Bay Regional Park District and the State of California, and their respective elective and appointive boards, commissions, officers, agents, employees, and volunteers as additional insureds. Such policies shall state "insurance is primary and all other insurance shall be noncontributory", shall waive all rights of subrogation against the additional

insureds; and shall also contain a provision that the Owner shall be notified in writing thirty (30) days before the policies may be canceled or allowed to expire or any reduction in coverage. An additional certificate shall be submitted with the final Application for Payment showing required continuation of coverage beyond the Final Payment.

SC-3.03 Property Insurance: Adjustment of Loss. A loss insured under the Contractor's property insurance shall be adjusted with the Contractor and made payable to the Contractor as fiduciary for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Contractor shall deposit the insurance proceeds in a separate account, and shall distribute payment to the parties in proportion to their cost for repairing or replacing the damaged Work. The Contractor shall provide a complete audited accounting of the distribution of insurance proceeds to all parties of interest.

5.4.4 SC-4 INTENTIONALLY LEFT BLANK

6.4.5 SC-5. SPECIFICATIONS.

The Specifications which govern the materials and equipment to be furnished and the Work to be performed under this contract shall be available at website: <https://www.americanrivers.org/3cpproject/>

The Specifications as a whole will govern the construction of the entire Work.

6.4.6 SC-6. DRAWINGS.

The Contract Drawings shall be available at website <https://www.americanrivers.org/3cpproject/>

6.4.7 SC-7. OWNER.

Owner is American Rivers, Inc. All notices, letters, and other communication directed to Owner shall be addressed and delivered to:

American Rivers, Inc.
Attn: Amy Merrill
2150 Allston Way, Suite 320
Berkeley, California 94704

With an email copy to: 3Creeks@americanrivers.org

All legal notices shall also be copied to:

American Rivers, Inc.
Attn: General Counsel
1101 14th Street, NW
Suite 1400
Washington, DC 20005
With an email copy to: contracts@amrivers.org

6.4.8 SC-8. PROJECT MANAGER.

All duties and responsibilities assigned to Project Manager in the Contract Documents, with the corresponding rights and authority will be assumed by the person or firm designated by Owner.

6.4.9 SC-9. RESIDENT PROJECT MANAGER.

Owner may furnish a Resident Project Manager and assistants to aid Project Manager in carrying out its responsibilities at the site.

6.4.10 SC-10. RESPONSIBILITY FOR PAYMENT.

Except for items specifically identified as provided by Owner, Contractor shall pay for all labor, materials and other incidental costs incurred under this contract.

6.4.11 SC-11. DOCUMENTATION TO ACCOMPANY APPLICATIONS FOR PAYMENT.

SC-11.01. Contractor's Application for Payment shall be accompanied by a brief, bulleted Progress Report on the work completed to-date and planned for the next payment period.

SC-11.02. Materials and Equipment. If payment is requested for materials and equipment not incorporated in Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Progress Payment shall be accompanied by such data, satisfactory to Owner, as will establish Owner's title to the material and equipment and protect its interest therein, including applicable insurance. Payment for such materials and equipment shall be based only upon the actual cost of the materials and equipment to Contractor and shall not include any overhead or profit to Contractor.

SC-11-03. Documentation for Final Payment. Contractor's Application for Final Payment for the Project shall be accompanied by consent of the Surety to final payment.

6.4.12 SC-12. RETAINAGE.

Owner shall retain from progress payments, until payment is due under the terms and conditions governing final payments, 10 percent (10%) of payment authorized until this Work is substantially complete.

6.4.13 SC-13. PARTIAL UTILIZATION.

Owner has the right to take possession of or use any completed or substantially completed portions of the Work at any time, but such taking possession or use will not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

Owner's use of any facilities so identified in the Contract Documents will not be grounds for extension of the Contract Time or change in the Contract Price.

Owner's use of any facilities not specifically identified in the Contract Documents will be in accordance with conditions agreed to prior to such use, and any extra costs or delays in completion incurred and properly claimed by Contractor will be equitably adjusted with a Change Order.

Facilities substantially completed in accordance with the Contract Documents which are occupied or used by Owner prior to Substantial Completion of the entire Work will be defined by Project Manager in a written notice to Contractor fixing the responsibility for insurance, maintenance, and utilities on that part of the Work and including a tentative list of items to be completed or corrected before final acceptance.

Guarantee periods for accepted or substantially completed Work, including mechanical and electrical equipment, will commence upon the start of continuous use by owner.

All tests and instructions of Owner's personnel must be satisfactorily completed, and Owner shall assume responsibility for and operation of all facilities occupied or used except as may arise through portions of the Work not yet completed by Contractor.

6.4.14 SC-14. SUBSTANTIAL COMPLETION.

When Contractor considers the Work ready for full occupancy or utilization by Owner, approximately April 2023, Contractor shall declare in writing to Owner that the Work is substantially complete and request that Project Manager issue a Notice of Substantial Completion therefore. Substantial completion means installation of all plants, furnishings and other accoutrements according to Drawings and Specifications, and maintenance such that success criteria described in Section 4.4 are met.

Within a reasonable time thereafter, Contractor and Project Manager shall make an inspection of the Work to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager shall notify Contractor in writing giving reasons therefore. If Project Manager considers the Work substantially complete, Project Manager shall prepare and deliver to Contractor a Tentative Notice of Substantial Completion which will fix the date of Substantial Completion, and the responsibilities between Owner and Contractor for operation, utilities, and maintenance. The notice shall include a tentative list of items to be completed or corrected before final acceptance.

"Substantial Completion" is the stage in the progress of the Work when, in the opinion of the Project Manager, the Work (or designated portion thereof) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work (or a designated portion thereof) for its intended use.

6.4.15 SC-15. FINAL INSPECTION AND ACCEPTANCE.

Upon written notice that Contractor considers all Work complete, Project Manager shall make a final inspection with Contractor and shall notify Contractor in writing of incomplete or defective work revealed by the inspection. Contractor shall promptly remedy such deficiencies.

After Contractor has remedied all deficiencies to the satisfaction of Project Manager and delivered all construction records, maintenance and operating instructions, schedules, guarantees, bonds, certificates

of inspection, and other documents (all as required by the Contract Documents), Contractor shall be promptly notified in writing by Project Manager that the Work is acceptable.

6.4.16 SC-16. LIQUIDATED DAMAGES.

Time is an essential condition for the performance of Contractor under this Agreement. Should Contractor fail to perform the Work within the periods of time stipulated in the Instructions To Applicant, Contractor shall pay to Owner, as liquidated damages and not as a penalty, the amounts listed in the Instructions To Applicant per day of default unless the Contract time is extended by Owner.

6.4.17 SC-17. CORRECTION PERIOD.

Nothing in the General Conditions Article 13 concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time periods relates only to the specific obligations of Contractor to correct the Work, and has no relationship to the time within which its obligations under the Contract Documents may be sought to be enforced, not to the time within which proceedings may be commenced to establish its liability with respect to its obligations other than to specifically correct the work.

6.4.18 SC-18. SITE WORK HOURS.

Work hours will generally be 7:00 am to 5:00 pm Monday through Friday; however, emergency Work may be done with Owner's prior permission.

6.4.19 SC-19. LEGAL ADDRESSES.

The business address of Contractor given in the Proposal Form and Contractor's office in the vicinity of the Work are both hereby designated as the places to which all notices, letters, and other communications to Contractor will be mailed or delivered. The address of Owner appearing hereinbefore is hereby designated as the place to which all notices, letters and other communications to Owner shall be mailed or delivered. Either party may change its address at any time by an instrument in writing delivered to the other party.

6.4.20 SC-20. INTENTIONALLY LEFT BLANK

6.4.21 SC-21. UNDERGROUND INSTALLATIONS.

Except as otherwise provided in Article 4 of the General Conditions, existing underground installations are indicated on the drawing only to the extent such information was made available to or discovered by Design Project Manager in preparing the drawings. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed.

Contractor shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by calling Underground Service Alert (USA) forty-eight (48) hours prior to beginning any work to allow the appropriate utility to mark any crossing of the Work area.

6.4.22 SC-22. HISTORICAL OR ARCHAEOLOGICAL DEPOSITS.

If, during the course of construction, evidence of deposits of historical or archaeological interest is found, Contractor shall cease operations affecting the find and shall notify the Owner. No further disturbance of the deposits shall ensue until Contractor has been notified by Owner that it may proceed. Compensation to Contractor, if any, for lost time or change in construction to avoid the find, shall be determined in accordance with changed conditions or Change Order provisions of the Contract Documents.

6.4.23 SC-23. INSPECTION BY PUBLIC AGENCY.

Authorized representatives of the State of California, through Owner, shall have access to the Work wherever it is in preparation or progress. Contractor shall provide proper facilities for such access and inspection.

6.4.24 SC-24. LAYOUT OF WORK.

Mock-up of Plant Patch: Layout plants for plant patches typical for each Patch Type in the Design Drawings for Resident Project Manager for review and approval. Patches planted prior to mock-up review and approval shall be replanted to meet design intent per Resident Project Manager direction. Following this field meeting and approval by the Resident Project Manager, the Contractor will be responsible for the accurate location of that completed Work. This lay out and approval process must occur for each of the Patch Types designated in the Design Drawings. The Contractor shall reimburse the Owner for the Resident Project Manager's time needed to reapprove plant lay outs that are lost or damaged due to the Contractor's failure to adequately protect field indicators.

6.5 CONTRACT BONDS AND INSURANCE

6.5.1 PERFORMANCE BOND

The successful Applicant shall file with the Owner, at the time of execution of the Contract, a Performance Bond acceptable to Owner and with a Surety company who appears on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located. The bond shall name American Rivers, Inc. and Contra Costa County Flood Control and Water Conservation District as co-obligees. The bond shall be in the full amount of the certain Agreement executed with the OWNER, and as a condition of this obligation, Contractor shall truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Agreement during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if Contractor shall satisfy all claims and demands incurred under such Agreement, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

Further, said Surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of the Agreement or to Work to be performed thereunder or the Contract Documents accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the Work or to the Contract Documents.

6.5.2 PAYMENT BOND

The successful Applicant shall file with the Owner at the time of execution of the Contract, a Payment Bond acceptable to Owner and with a Surety company who appears on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located. The bond shall name American Rivers, Inc. and Contra Costa County Flood Control and Water Conservation District as co-obligees. The bond shall be in the full amount of the certain Agreement executed with the OWNER, and as a condition of this obligation, Contractor shall truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Agreement during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if Contractor shall satisfy all claims and demands incurred under such Agreement, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

Further, said Surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of the Agreement or to Work to be performed thereunder or the Contract Documents accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the Work or to the Contract Documents.

6.5.3 INSURANCE

Contractor shall purchase and maintain such insurance as required by the Section 5.3 of the General Conditions and the Supplementary Condition 3 (SC-3)).

6.5.4 FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS AND INSURANCE CERTIFICATES

The Applicant who has a Contract awarded to it and who fails to promptly and properly execute the Contract and furnish the prescribed bonds and Certificates of Insurance shall forfeit the bid security that accompanied the Proposal, and the bid security shall be retained as liquidated damages by the Owner. It is agreed that this said sum is a fair estimate of the amount of damages the Owner will sustain in case the Applicant fails to enter into a Contract.

6.6 AGREEMENT COMPLIANCE REQUIREMENTS

The selected Contractor shall be provided with a draft agreement following selection; however, Contractor should be aware of the following agreement provisions required by Owner, its Project Partners and/or its funding sources in developing its Proposal.

6.6.1 Non-Discrimination.

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, allow harassment against any employee or applicant for employment or deny benefits to any person because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), genetic information, age (over 40), marital status, gender, gender identity, gender expression, sexual orientation, military and veteran status, denial of pregnancy disability leave or reasonable accommodation, and denial of family and medical care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code Section 12990 (a-f) et seq.), the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the California Government Code (Gov. Code, § 11135-11139.5), and the regulations or standards adopted by the State Coastal Conservancy to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

6.6.2 Equal Opportunity Clause (41 CFR § 60-1.4).

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which Applicant has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction

by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

6.6.3 Debarment and Suspension (Executive Order (E.O.) 12549 and E.O. 12689).

No contract may be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O. 12549 and E.O. 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. By signing this Agreement, the contractor certifies that it and its principal employees are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

6.6.4 Good Faith Efforts (40 CFR Chapter I, Subchapter B, Part 33, Subpart C, § 33.301).

Contractor shall take the following steps when awarding subcontracts:

- (1) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.
- (2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the Proposal or proposal closing date.
- (3) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
- (4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

6.6.5 Prevailing Wages.

Pursuant to California Labor Code section 1773, the Director of the Department of Industrial Relations has ascertained the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which the Project work is to be performed for each craft, classification, or type of worker needed to execute the Project work. Contractor shall pay, and require all subcontractors to pay, at least these prevailing wage rates to all persons on the Project work.

6.6.6 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

The contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standard Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30)-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(2) Withholding. The U.S. Environmental Protection Agency (EPA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the EPA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security

numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the EPA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, after written notice to the contractor, EPA, may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for

the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier

subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses of 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

6.6.7 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

The contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which laborer is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The EPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these clauses.

6.6.8 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

The contractor and its subcontractors must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the EPA and the Regional Office of the EPA.

6.6.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

By signing this Agreement, the contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. The contractor must also obtain the same certification from any subcontractors and inform Public Agency of any disclosure.

6.6.9 Inspections.

Contractor shall provide access to the Project Site at all reasonable times to representatives of the California Department of Water Resources, State Coastal Conservancy, California Natural Resources Agency and Sacramento-San Joaquin Delta Conservancy for the purpose of inspection of the work and improvements under this contract.

6.6.10 Americans With Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

6.6.11 Acknowledgment.

Funding for this project has been provided in full or in part through an Agreement with the Sacramento-San Joaquin Delta Conservancy (Conservancy) pursuant to The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (CWC §79707[g]); funding under Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000, administered by State of California, Department of Water Resources; funding by the California Natural Resources Agency to improve River Parkways; funding by the State Coastal Conservancy and Water Quality, Supply, and Infrastructure Improvement Act of 2014; and, the US EPA San Francisco Bay Water Quality Improvement Fund.

6.6.12 Corporate Qualifications to Do Business In California

When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6.6.13 Air or Water Pollution Violation

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

6.7 APPENDIX: WEED SPECIES LIST

The following plant species are listed with a high or moderate overall invasive rating from the California Invasive Plant Council as of May 21, 2020 and is the list which will be used for ‘weed species’ in the Three Creeks Parkway Restoration Project from 2020 through 2023.

Latin binomial	Common Names	Rating
<i>Aegilops triuncialis</i>	barb goatgrass	High
<i>Alternanthera philoxeroides</i>	alligatorweed	High
<i>Ammophila arenaria</i>	European beachgrass	High
<i>Arundo donax</i>	giant reed	High
<i>Brassica tournefortii</i>	Sahara mustard	High
<i>Bromus madritensis ssp. rubens</i>	red brome	High
<i>Bromus tectorum</i>	cheatgrass	High
<i>Carpobrotus edulis</i>	highway iceplant	High
<i>Carthamus lanatus</i>	false starthistle	High
<i>Centaurea solstitialis</i>	yellow starthistle	High
<i>Centaurea stoebe ssp. micranthos</i>	spotted knapweed	High
<i>Cortaderia jubata</i>	jubatagrass	High
<i>Cortaderia selloana</i>	pampasgrass	High
<i>Cytisus scoparius</i>	Scotch broom	High
<i>Delairea odorata</i>	Cape-ivy	High
<i>Egeria densa</i>	Brazilian egeria	High
<i>Ehrharta calycina</i>	purple veldtgrass	High
<i>Eichhornia crassipes</i>	water hyacinth	High
<i>Elymus caput-medusae</i>	medusahead	High
<i>Euphorbia virgata</i>	leafy spurge	High
<i>Genista monspessulana</i>	French broom	High
<i>Hedera canariensis</i>	Algerian ivy	High
<i>Hedera helix</i>	English ivy	High
<i>Hydrilla verticillata</i>	hydrilla	High
<i>Lepidium latifolium</i>	perennial pepperweed	High
<i>Limnobium spongia</i>	South American spongeplant	High
<i>Ludwigia hexapetala</i>	creeping waterprimrose	High
<i>Ludwigia peploides</i>	floating water primrose	High
<i>Lythrum salicaria</i>	purple loosestrife	High
<i>Myriophyllum aquaticum</i>	parrotfeather	High
<i>Myriophyllum spicatum</i>	spike watermilfoil	High
<i>Onopordum acanthium</i>	Scotch thistle	High
<i>Rubus armeniacus</i>	Himalayan blackberry	High
<i>Salvinia molesta</i>	giant salvinia	High
<i>Sesbania punicea</i>	scarlet wisteria	High
<i>Spartina alterniflora x S. foliosa</i>	smooth hybrid cordgrass	High
<i>Spartina densiflora</i>	dense-flowered cordgrass	High

Latin binomial	Common Names	Rating
<i>Spartium junceum</i>	Spanish broom	High
<i>Tamarix chinensis</i>	Chinese tamarisk	High
<i>Tamarix gallica</i>	French tamarisk	High
<i>Tamarix parviflora</i>	smallflower tamarisk	High
<i>Tamarix ramosissima</i>	Saltcedar	High
<i>Ulex europaeus</i>	gorse	High
<i>Acacia dealbata</i>	silver wattle	Moderate
<i>Acroptilon repens</i>	Russian knapweed	Moderate
<i>Ageratina adenophora</i>	eupatory	Moderate
<i>Ailanthus altissima</i>	tree-of-heaven	Moderate
<i>Alhagi maurorum</i>	camelthorn	Moderate
<i>Arctotheca calendula</i>	fertile capeweed	Moderate
<i>Arctotheca prostrata</i>	capeweed	Moderate
<i>Asparagus asparagoides</i>	bridal creeper	Moderate
<i>Asphodelus fistulosus</i>	onion weed	Moderate
<i>Atriplex semibaccata</i>	Australian saltbush	Moderate
<i>Avena barbata</i>	slender oat	Moderate
<i>Avena fatua</i>	wild oats	Moderate
<i>Brachypodium distachyon</i>	annual false-brome	Moderate
<i>Brachypodium sylvaticum</i>	slender false-brome	Moderate
<i>Brassica nigra</i>	black mustard	Moderate
<i>Bromus diandrus</i>	riggut brome	Moderate
<i>Carduus nutans</i>	musk thistle	Moderate
<i>Carduus pycnocephalus</i>	Italian thistle	Moderate
<i>Carpobrotus chilensis</i>	sea fig	Moderate
<i>Carrichtera annua</i>	Ward's weed	Moderate
<i>Centaurea calcitrapa</i>	purple starthistle	Moderate
<i>Centaurea diffusa</i>	diffuse knapweed	Moderate
<i>Centaurea jacea ssp. pratensis</i>	meadow knapweed	Moderate
<i>Centaurea melitensis</i>	tocalote	Moderate
<i>Centaurea virgata var. squarrosa</i>	squarrose knapweed	Moderate
<i>Chondrilla juncea</i>	skeleton weed	Moderate
<i>Chrysanthemoides monilifera ssp. monilifera</i>	boneseed	Moderate
<i>Cirsium arvense</i>	Canada thistle	Moderate
<i>Cirsium vulgare</i>	bull thistle	Moderate
<i>Clematis vitalba</i>	old man's beard	Moderate
<i>Colocasia esculenta</i>	taro root	Moderate
<i>Conium maculatum</i>	poison-hemlock	Moderate
<i>Cotoneaster franchetii</i>	orange cotoneaster	Moderate
<i>Cotoneaster lacteus</i>	milkflower cotoneaster	Moderate
<i>Cotoneaster pannosus</i>	silverleaf cotoneaster	Moderate

Latin binomial	Common Names	Rating
<i>Cynara cardunculus</i>	artichoke thistle	Moderate
<i>Cynodon dactylon</i>	Bermuda grass	Moderate
<i>Cynoglossum officinale</i>	common houndstongue	Moderate
<i>Cynosurus echinatus</i>	hedgehog dogtail	Moderate
<i>Cytisus striatus</i>	Portugese broom	Moderate
<i>Dipsacus fullonum</i>	common teasel	Moderate
<i>Dipsacus sativus</i>	Fullers teasel	Moderate
<i>Dittrichia graveolens</i>	stinkwort	Moderate
<i>Ehrharta erecta</i>	panic veldtgrass	Moderate
<i>Elaeagnus angustifolia</i>	Russian olive	Moderate
<i>Emex spinosa</i>	devil's thorn	Moderate
<i>Fallopia japonica</i>	Japanese knotweed	Moderate
<i>Fallopia sachalinensis</i>	giant knotweed	Moderate
<i>Festuca arundinacea</i>	reed fescue	Moderate
<i>Festuca myuros</i>	rat-tail fescue	Moderate
<i>Festuca perennis</i>	Italian ryegrass	Moderate
<i>Ficus carica</i>	edible fig	Moderate
<i>Foeniculum vulgare</i>	fennel	Moderate
<i>Gazania linearis</i>	gazania	Moderate
<i>Genista monosperma</i>	bridal veil broom	Moderate
<i>Glyceria declinata</i>	mannagrass	Moderate
<i>Halogeton glomeratus</i>	Halogeton	Moderate
<i>Hirschfeldia incana</i>	short-pod mustard	Moderate
<i>Holcus lanatus</i>	common velvet grass	Moderate
<i>Hordeum marinum</i>	Mediterranean barley	Moderate
<i>Hordeum murinum</i>	hare barley	Moderate
<i>Hypericum canariense</i>	Canary Island St. Johnswort	Moderate
<i>Hypochaeris radicata</i>	rough cat's-ear	Moderate
<i>Isatis tinctoria</i>	dyer's woad	Moderate
<i>Lepidium chalepense</i>	lens-podded hoary cress	Moderate
<i>Lepidium draba</i>	heart-podded hoary cress	Moderate
<i>Leucanthemum vulgare</i>	ox-eye daisy	Moderate
<i>Limonium duriusculum</i>	European sea lavender	Moderate
<i>Linaria dalmatica ssp. dalmatica</i>	dalmatian toadflax	Moderate
<i>Linaria vulgaris</i>	yellow toadflax	Moderate
<i>Lythrum hyssopifolium</i>	hyssop loosestrife	Moderate
<i>Mentha pulegium</i>	pennyroyal	Moderate
<i>Mesembryanthemum crystallinum</i>	crystalline iceplant	Moderate
<i>Myoporum laetum</i>	ngaio tree	Moderate
<i>Nicotiana glauca</i>	tree tobacco	Moderate
<i>Oxalis pes-caprae</i>	Bermuda buttercup	Moderate
<i>Pennisetum setaceum</i>	crimson fountain grass	Moderate

Latin binomial	Common Names	Rating
<i>Phalaris aquatica</i>	harding grass	Moderate
<i>Potamogeton crispus</i>	curly-leaved pondweed	Moderate
<i>Rumex acetosella</i>	sheep sorrel	Moderate
<i>Saccharum ravennae</i>	ravennagrass	Moderate
<i>Salsola soda</i>	glasswort	Moderate
<i>Schinus terebinthifolius</i>	Brazilian pepper tree	Moderate
<i>Senecio glomeratus</i>	cutleaf burnweed	Moderate
<i>Spartina anglica</i>	English cordgrass	Moderate
<i>Stipa capensis</i>	Cape ricegrass	Moderate
<i>Tanacetum vulgare</i>	common tansy	Moderate
<i>Torilis arvensis</i>	hedgeparsley	Moderate
<i>Triadica sebifera</i>	Chinese tallow tree	Moderate
<i>Vinca major</i>	periwinkle	Moderate
<i>Washingtonia robusta</i>	Mexican fan palm	Moderate
<i>Zostera japonica</i>	dwarf eelgrass	Moderate