



American Rivers
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REQUEST FOR PROPOSAL

Resident Project Manager for Landscaping at Three Creeks Parkway

Landscaping Management Services

KEY PROPOSAL INFORMATION

- PROPOSALS are due by 5:00 pm (PDT) Tuesday, October 27, 2020, sent via email to 3Creeks@americanrivers.org.
- Questions must be emailed to 3Creeks@americanrivers.org by 5:00 pm (PDT) on Tuesday, October 13, 2020. If necessary, responses will be included in an addendum.
- Selection: By Tuesday November 17, 2020
- Material available at: <https://www.americanrivers.org/3cpproject/>

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1 GENERAL INFORMATION

1.1 INTRODUCTION

Through this Request for Proposal (RFP), American Rivers seeks Proposals from qualified licensed contractors to serve as Resident Project Manager to provide on-site management of the planting, irrigation and weed control for the Three Creeks Parkway Restoration Project (Project) at Marsh Creek starting in December 2020 and running through December 2021. A landscaping firm has been selected to execute the Project. This RFP is for the management and oversight of the landscape contractor. The most qualified Applicant will be selected based on the Scoring Criteria provided in Section 3.3. The Proposal budget of the selected Applicant will be applied beginning in December 2020; the proposed budget must remain valid through the end of the contract period in December 2021. 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 (Owner) 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 Project Management Team is comprised of 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). 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 Prop 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 Prop 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 December 2020. The first and major phase of landscape implementation of the Project Site will occur from approximately December 2020 through December 2021.

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>).

All questions concerning this RFP shall be submitted by e-mail to Amy Merrill at 3Creeks@americanrivers.org on or before 5 p.m. (PDT), Tuesday October 13, 2020. Should answers to questions amend the RFP, American Rivers will issue an RFP Addendum.

1.2 RESPONSE DEADLINE

Submittals will be accepted no later than 5 p.m. (PDT) on Tuesday October 27, 2020. Proposals must be submitted **electronically** to 3Creeks@americanrivers.org. Files and attachments must not exceed 10 megabytes in size or they will not be able to be received.

PLEASE NOTE: American Rivers will not accept facsimile (FAX) responses. Submittals must be **received** by the time and process indicated above. **Late submissions will not be accepted.**

1.3 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.

1.4 REJECTION OF PROPOSAL SUBMITTALS

American Rivers reserves the right to reject any or all submittals received in response to this RFP or to cancel this RFP or to terminate the selection proceedings at any time, if it determines such action is in the best interests of American Rivers.

1.5 SITE LOCATION AND VIEWING

The project area may be viewed from several areas in the City of Brentwood: the eastern end of Sungold Court, along Island Palm Way in Palmilla Estates, and from the intersection of Dainty Avenue and Central

Boulevard, and from the intersection of Central Boulevard and Marsh Creek near North Estates Drive. Interested parties may view the site from these locations at their own risk and while abiding by all traffic and safety rules while remaining outside the fenced-off premises due to on-going construction. Maps and a Google Earth kmz are available with other project information at <https://www.americanrivers.org/3cpproject/>

1.6 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 American Rivers reserves the right to adjust the dates as may be required by circumstances. Contractor selection will be decided by the Project Management Team.

- RFP available to prospective applicants.....October 30, 2020
- Written question submittal deadline.....October 13, 2020
- Final date for proposal submittals.....October 27, 2020
- Selection of contractor.....November 17, 2020
- Contract executed.....November 30, 2020

1.7 AWARD OF CONTRACT

The Contractor submitting the successful proposal shall be required to execute a contractual agreement issued by American Rivers. Contractor shall be selected and designated to perform services for the Project for a term not to exceed 12 months (through December 31, 2021) unless a formal extension of the term of the agreement is authorized by American Rivers and issued in the form of an agreement amendment. American Rivers does not guarantee that an agreement will be written from this RFP.

2 SCOPE OF WORK

2.1 PROJECT DESCRIPTION

The 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 the end of December 2020.

The Resident Project Manager will initiate planning with the Owner and Landscape Contractor as early as November 30, 2020 and will begin on-site management as early as December 15, 2020. The Scope of Work for the Resident Project Manager includes reviewing and approving all submittals (with Owner approval where necessary), overseeing procurement, preparation and installation of all materials, tracking and reporting on project schedule and budget, and regular communications with the Owner on project progress.

2.2 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	Role/Tasks and Responsibilities
American Rivers/Owner	Project management, administration, monitoring support
Contra Costa County Flood Control and Water Conservation District	Landowners of channel, manage civil implementation
Restoration Design Group	Design Project firm (<u>Design Project Manager</u> – Erik Stromberg), assist project implementation management, project monitoring
Watershed Nursery	Supply native container plants for restoration plantings (Landscape Contractor shall provide the non-native container plants for Sungold Park and Dainty Triangle)
Triangle Properties	Landscape Contractor (to begin as early as 11/15/2020)
Granite Rock	Civil work contractor (to be complete by 12/31/20)
Sarah Puckett	Consultant for Project management, public outreach
Friends of Marsh Creek Watershed	Monitoring support, volunteer support
Earth Team	Monitoring support, volunteer support
East Bay Regional Park District	Manage and maintain Marsh Creek Regional Trail, maintenance
City of Brentwood	Landowners of Sungold Park, 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

2.3 TASK SUMMARIES

Tasks for the Project, to begin in November/December 2020 and be completed by December 31, 2021, are summarized below. In general, the Resident Project Manager will monitor the progress of work pursuant to Specifications and Drawings and provide recommendations and information to American Rivers regarding anticipated challenges in meeting Project schedule or staying within Project budget and work to problem-solve these issues in advance.

Full detail of the Landscape work as well as the General Conditions, Supplementary Conditions, and Compliance Requirements to be implemented by Triangle Properties and managed by the Resident Project Manager is provided as separate documents in the Landscape Design Drawings, the Specifications, and the Landscape Contract.

Task 1. Project Management

This task involves the management of the Resident Project Manager-American Rivers contract, including contract execution, invoicing, and quarterly progress reports. Quarterly invoices and reports will be submitted by the Landscape Contractor to the Resident Project Manager and include detailed labor hours and costs and separate listing of any Project expenses (e.g., travel). The Resident Project Manager will review and approve these invoices for American Rivers and prepare brief quarterly reports. Quarterly Reports will be a one to two page bulleted list highlighting actions completed by (1) the Landscape Contractor and sub-contractors and (2) the Resident Project Manager during the reporting period.

Task 2. Pre-Construction Coordination

This task includes four subtasks:

- 1) Initial planning: Initial planning and coordination with Owner and Landscape Contractor to review the schedule provided by Landscape Contractor for project implementation,
- 2) Pre-construction meeting: Lead a pre-construction 'kick-off meeting' that includes all key team member (namely Triangle Properties, Contra Costa County Flood Control District, Restoration Design Group, and American Rivers).
- 3) Develop detailed schedule: Develop schedule to receive and review materials from Landscape Contractor, including
 - a) Submittals,
 - b) Plans for equipment movement on and off site,
 - c) Materials ordering and receiving,
 - d) Permits to execute the work (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),
 - e) Adherence to existing permit requirements (see Section 4.5 Permits of Landscape Contractor RFP), and
 - f) Any needed follow-up for Landscape Contractor's compliance with required bonds and proof of insurance (e.g., per the Landscape Contractor contract: "The required bonds shall be delivered at the preconstruction conference that shall be held within four (4) weeks before the Notice to Proceed").
- 4) Submittal Review Process: Receive from the Landscape Contractor and process all shop drawings, project data, samples and other submittals. Coordinate submittals with information contained in

project Drawings and Specifications. Establish and implement procedures consistent with the Landscape Contractor's General Conditions and Supplementary Conditions for expediting the processing and approval of shop drawings, product data, samples and other submittals. Coordinate shop drawing review with Design Project Manager on an as needed basis.

Task 3. On-Site Management During Construction

This task includes all on-site work to coordinate with Landscape Contractor to complete project in accordance with Drawings and Specifications and in coordination with the Design Project Manager and American Rivers. Subtasks include:

- 1) Manage Construction Schedule: Review the construction schedule, including activity sequences and durations, schedule of submittals and schedule of delivery for products with long lead-time. Work with the Landscape Contractor to maintain the project schedule to show current conditions and suggest revisions that may be required.
- 2) Design Interpretations: Resolve directly if possible, or consult with the Design Project Manager if Contractor requests interpretations of the meaning and intent of the drawings and specifications, and assist in the resolution of questions, which may arise.
- 3) Inspections: Ensure compliance with all aspects of the Landscape Construction contract by monitoring, evaluating, approving or rejecting the Contractor's work in accordance with the Drawings and Specifications, including modifications made in coordination with the Design Project Manager and American Rivers.
- 4) Material Quality Review: Review laboratory, shop and mill test reports of materials and equipment, and coordinate as required with the Design Project Manager and American Rivers.
- 5) Recommendations for Corrections: Recommend courses of action to American Rivers when requirements of the contract are not being fulfilled, and the non-performing party will not voluntarily take satisfactory corrective action.

Task 4. Budget Tracking and Invoice Review

This task involves organization and careful review of materials ordered vs. obtained that are included in Landscape Contractor invoices and back up materials to ensure quantities and prices are aligned with project plans and the Landscape Contractor bid values. Subtasks are described below:

- 1) Review costs: Review approved estimate of construction cost in Landscape Contract. Incorporate approved changes as they occur.
- 2) Review invoices: Review of Landscape Contractor (and sub-contractors as appropriate) invoices to ensure hours, dates and values align with work completed and Landscape Contractor bid values, as well as labor laws.
- 3) Prepare a cost control program: Provide continuous monitoring of the approved estimate of construction cost, showing actual costs for activities in progress and estimates for incomplete tasks. Identify variances between actual and budgeted or estimated costs and advise the American Rivers when projected costs exceed budgets or estimates.
- 4) Documentation: Document all claims and maintain records of all additional work beyond that specified in the Landscape Contract.

Task 5. Communication and Reporting

This task is focused on documenting the progress of project implementation and maintaining open communications among the Landscape Contractor, the Design Project Manager, and American Rivers. There are four subtasks, listed below.

- 1) Progress Meetings: Based on implementation schedule, conduct construction progress meetings during peak implementation period (e.g., December through April 2021) and monthly meetings from May through December 2021. These meetings will be used to discuss such matters as procedures, progress, problems and scheduling. Prepare and distribute minutes within 48 hours.
- 2) Project Documentation: Maintain at the project site on a current basis and in good order: a record copy of all drawings, specifications, addenda, change orders and other modifications, shop drawings, product data, samples, submittals, purchases, materials, equipment, any applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the contract work.
- 3) Review As-Built Drawings: During the course of Year 1 construction, review and approve/disapprove as built drawings by Landscape Contractor to ensure as built drawings include markings of plantings and site furnishings as installed, as well as any alternations in plant locations or species or other corrections or changes to the Drawings and Specifications. Report summary of changes in As-Built Drawings to American Rivers and Design Project Manager quarterly.
- 4) Deliver Documents: Deliver above documents to American Rivers.

2.4 SCHEDULE OF WORK

The following general schedule outlines the expected timing for Tasks 1-5.

Task	Task or Action	2020	2021			
		Q4	Q1	Q2	Q3	Q4
1	Project Management					
	Execute Contract					
	Quarterly reports and invoices					
2	Pre-construction coordination					
	Initial planning					
	Pre-construction meeting					
	Develop detailed schedule					
	Submittal review process					
3	On-Site Management					
	Manage construction schedule					
	Design interpretations					
	Inspections					
	Material quality review					
	Recommendations for corrections					
4	Budget Tracking and Invoice Review					
	Review costs					
	Review invoices					

Task	Task or Action	2020	2021			
		Q4	Q1	Q2	Q3	Q4
	Prepare cost control program					
	Documentation					
5	Communications and Reporting					
	Progress meetings					
	Project documentation					
	Review As-Build Drawings					
	Deliver documents					

3 RESPONDING TO THIS RFP

3.1 MINIMUM REQUIREMENTS

Please submit a proposal that includes, at a minimum, the following elements:

3.1.1 Firm Qualifications and References

- i. Possession of a current C-27 Landscape Contractor license. Any Proposal submitted by an Applicant 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.
- ii. Provide details regarding demonstrated and specialized experience that is responsive to the scoring criteria in Section 3.3, and the names of at least two clients that are willing to provide references for similar work completed, if possible.

3.1.2 Staff Experience

- i. Provide details regarding demonstrated and specialized experience that is responsive to the scoring criteria in Section 3.3
- ii. Include brief bios and resumes for key staff detailing relevant qualifications.
- iii. Provide up to two project descriptions for similar work with dates, budget, deliverables, and client contact information.

3.1.3 Approach

- i. Applicant should provide narrative discussion of the approach proposed for successfully completing the project and a risk management strategy for avoiding unexpected delays, costs, and complications.

3.1.4 Cost Estimate

- i. Task Budget and total cost estimate
- ii. Applicant will provide a Schedule of Rates that shall consist of a list of Project staff by title with hourly billing rates, and if handling charges or profit are added to other direct costs (e.g., subcontractor's costs, reimbursables).

Please limit the proposal to 20 pages in total length including all the above elements. If proposal includes subconsultants, each subconsultant increases the page length limit by 5 pages per

subcontractor so that each may provide a firm profile, relevant project experience, and key staff resumes.

Costs incurred for developing this RFP and in anticipation of award of the agreement are entirely the responsibility of the Applicant and shall not be charged to American Rivers. All submittals become the property of American Rivers upon receipt and will not be returned to Applicant.

3.2 SELECTION PROCESS

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 3.3 SCORING CRITERIA which, in the Project Management Team’s judgment will best serve the interest of the Project. American Rivers 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.

3.3 SCORING CRITERIA

The Project Management Team will evaluate Proposals using the following scoring criteria:

	SCORING CRITERIA	MAXIMUM POINTS
1.	Proposals Responsive to RFP Proposal includes all required documents and is submitted on time.	PASS/FAIL
2.	Cost Effectiveness of Proposal	40
3.	Applicant/Contractor Experience in Landscape Implementation Quality and demonstrated effectiveness of the firm’s experience doing work related to the project they would oversee. This includes a demonstration of the Applicant’s experience implementing the following types of work:	15

	SCORING CRITERIA	MAXIMUM POINTS
	<ul style="list-style-type: none"> • Revegetation and maintenance of newly installed native vegetation in an urban/rural context; • Installation of landscape furnishings, such as boulders, gates, park benches and trail resurfacing; • Installation of irrigation systems according to Engineer designs and specifications; • Use of bioengineering materials such as Coir fabric, wattle, and cuttings; • Weed management. 	
4.	<p>Applicant/Contractor Experience and Qualifications as a Resident Project Manager</p> <p>Quality and demonstrated effectiveness of the firm’s experience and qualifications managing a landscaping or construction project, preferably as a third-party resident manager. This includes a demonstration of the Applicant’s experience performing the following types of work:</p> <ul style="list-style-type: none"> • Overseeing landscaping project implementation to ensure smooth and excellent implementation of the work; • Respectful and effective interaction and coordination with construction personnel, subcontractors, public servants, and other project related personnel; • Tracking and reporting on quantities and quality of materials, materials preparation, and Installation for all project elements, including site furnishings, irrigation systems, plantings, resurfacings; • Developing and maintaining a tracking system to ensure all materials, installation work, reports and other submittals, and other documentation are performed and delivered on schedule; • Developing and maintaining budget tracking system to track project costs in relation to bid amounts; • Regular efficient communications with Owner to provide relevant updates on project progress, early notification of issues or concerns, and problem-solving options; • Knowledge and experience with state labor laws and insurance requirements as applied to on-site conditions and work. 	20
5.	<p>Project Implementation Description</p> <p>These criteria will be judged by the Applicant’s stated plan for how they will manage the project, from on-site quality control, to trouble shooting, to submittal review, and schedule and budget tracking. An important component will also be communications with the Owner.</p>	20
6.	Certified disadvantaged, women, or minority business enterprise participation, and	5

	SCORING CRITERIA	MAXIMUM POINTS
	demonstrated commitment of the firm(s) to principles of diversity, equity, and inclusion.*	
	Total Possible Points	100

*<https://nmsdc.org/mbes/mbe-certification/>

51% ownership and management by female and/or minority and be a small business

4 ADMINISTRATIVE PROCESS AND REQUIREMENTS

4.1 AGREEMENT FOR SERVICES

- i. 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.
- ii. American Rivers will attempt to enter into negotiations with the selected Contractor for a satisfactory agreement and reasonable fee for the services needed.
- iii. If a satisfactory contractual agreement on services and compensation cannot be reached between American Rivers and the selected Contractor, American Rivers 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.
- iv. The selected Contractor, with which American Rivers successfully negotiates, shall be required to execute an agreement, which shall include the terms and conditions of this RFP. American Rivers reserves the right to modify or update the agreement in the interest of American Rivers 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 submitting for this RFP, the prospective Contractor and its key subcontractors acknowledge that the Project team will provide the services required in the agreement.

4.2 AGREEMENT 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 American Rivers and/or the Project Management Team and funding entities in developing its proposal.

4.2.1 Insurance

Contractor shall obtain and maintain for the Term of this Agreement, usual and customary policies of insurance, including Workers' Compensation insurance in the maximum amounts required by law; Professional Errors and Omissions insurance in the amount of \$1,000,000 or greater; Automobile Liability with bodily injury limits of at least \$1,000,000.00 per accident; and Commercial General Liability

(CGL) insurance in the amount of \$2,000,000 Aggregate, with reputable insurers with an AM Best Co. rating no lower than A-. Contractor shall also maintain Commercial Excess Liability or Umbrella coverage with a limit of \$2,000,000 or greater. Contractor shall provide a Waiver of Subrogation endorsement on the CGL and Workers Compensation policies. Contractor shall include American Rivers, Contra Costa County Flood Control and Water Conservation District (District), Contra Costa County (County), City of Brentwood, East Bay Regional Park District and their governing bodies, officers, agents, and employees, as an additional insured on a primary and noncontributing basis on its policies, and provide American Rivers with Certificates of Insurance. Delivery of these Certificates to American Rivers shall be a condition precedent to the first payment to Contractor. The insurance policies shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days written notice to American Rivers.

4.2.2 Environmental Compliance

Contractor shall work with American Rivers to ensure the Landscape Contractor abides by requirements of 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)
- DRAFT East Bay Regional Park District Encroachment Permit (Contractor obtains)
- DRAFT City of Brentwood Combined Grading/Building Permit
- 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/>

4.2.3 Corporate Qualifications to Do Business In California

Contractor certifies that it is currently qualified to do business in California. "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.

4.2.4 Expatriate Corporation

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1 and is eligible to contract with the State of California.

4.3 FEDERAL COMPLIANCE PROVISIONS

4.3.1 Equal Employment Opportunity – (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 he 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.

4.3.2 Rights to Inventions Made Under a Contract or Agreement.

With respect to non-profit organizations, contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

4.3.3 Debarment and Suspension (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, contractor or subgrantee 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.

Certification. By signing this Agreement, you certify that you are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If you are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

4.3.4 Trafficking in persons.

Contractor and its subcontractors and their employees may not engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect; procure a commercial sex act during the period of time that this Agreement is in effect; or use forced labor in the performance of this Agreement or subagreement.

4.3.5 Text messaging while driving.

In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately-owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

4.3.6 Drug-free Workplace (2 CFR Part 1401, 41 U.S.C. 701-707, as amended).

Recipients other than individuals, must:

- a. Make a good faith effort, on a continuing basis, to maintain a drug-free workplace. Contractors and subgrantees must agree to do so as a condition for receiving any award. Contractors and subgrantees agree to take the following measures:
 - i. Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see Sections 1401.305-1401.320); and
 - ii. Take actions concerning employees who are convicted of violating drug statutes in the workplace (see Sections 1401.325-1401.401).
- b. Identify all known workplaces under your Federal awards and subawards (see Sec. 36.230).

4.3.7 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 30 calendar days before the bid 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.

4.4 STATE COMPLIANCE PROVISIONS

The following provisions apply to this Agreement because this Agreement is funded in whole or in part by State of California (State) funds.

4.4.1 **Air and Water Law Compliance.**

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.

4.4.2 **Labor Compliance.**

Contractor must comply with applicable California Labor Code requirements, including, but not limited to, Section 1720 et seq. of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4) and payment of prevailing wages for work done and funded pursuant to this Project, including any payments to the Department of Industrial Relations under California Labor Code Section 1771.3.

4.4.3 **Union Organizing.**

Contractor certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.

4.4.4 **Budget Contingency/Limit On State Funds.**

Should State funding for this project be reduced, deleted or delayed by the federal or state budget process or other budget control actions, and the work under this agreement is canceled or suspended, American Rivers shall provide written notice to Contractor and be liable for any work completed up to the date of receipt of the written notice and shall have no liability for payment for work undertaken after such date.

4.4.5 **Acknowledgment.**

Contractor shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Project.

4.4.6 **Disclosure Agreement.**

Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through support

from Federal and State funding. Contractor shall coordinate with American Rivers in fulfilling this requirement.

4.4.7 Americans with Disabilities Act.

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

4.4.8 Audits.

American Rivers and the State, including the Department of General Services, the Department of Finance, the Bureau of State Audits, or their designated representative, reserve the right to conduct an audit at any time until the completion of the Project, with the costs of such audit borne by auditing entity. Contractor shall allow auditor(s) access to relevant records during normal business hours and allow interviews of any employees who might reasonably have information related to such records. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the construction and implementation of the project, and the use, management, operation and maintenance of the real property. Time and effort reports are also required. Contractor shall preserve all records pertaining to the Project for this purpose for at least three (3) years after Project completion.

4.4.9 Conflict of Interest.

Contractor shall not currently or for the duration of this Project employ any State officer or employee, unless the employment of a State officer or employee is required as a condition of regular State employment. Contractor certifies that none of its employees were previously employed by the State in the past twenty-four months in a position in which employee engaged in the decision-making process relevant to this Project. Contractor must disclose any activities involving representation of parties, or provision of consultation services to parties, who are adversarial to State's programs. This Agreement may immediately terminate if conflicts of interest cannot be reconciled with the performance of services under this Agreement.

4.4.10 Independent Capacity.

Contractor and its employees shall act in an independent capacity and not as officers, employees, or agents of the State for the duration of its performance of services under this Agreement.

4.4.11 Business and Professions Code.

Contractor and its subcontractor(s) (if applicable) must comply with the Business and Professions Code, including, but not limited to, section 6700 et seq. (Professional Engineers Act) or section 7800 et seq. (Geologists and Geophysicists Act). Further, the Contractor will conduct all work consistent with the professional standards of the industry and type of work performed in the course of the Project.

4.4.12 Drug-Free Workplace Certification.

By signing this Agreement. Contractor and its subcontractors hereby certify under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act

of 1990 (Government Code 8350 et seq.) and that it will have or will provide a drug-free workplace by taking the following actions:

- a. publish a statement notifying employees, and its subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, or subcontractors for violations as required by Government Code Section 8355(0). b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355
- b. to inform employees or subcontractors about all of the following:
 1. The dangers of drug abuse in the workplace,
 2. Grantee's policy of maintaining a drug-free workplace,
 3. Any available counseling, rehabilitation, and employee assistance programs, and
 4. Penalties that may be imposed upon employees and subcontractors for drug abuse violations.
- c. Provide as required by Government Code Sections 8355(c), that every employee, and/or subcontractor who works under this Agreement:
 1. Will receive a copy of Contractor's drug-free policy statement, and
 2. Will agree to abide by terms of Contractor's condition of employment, contract or subcontract.

4.4.13 **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.

4.4.14 **Rights in Data.**

If applicable, American Rivers and State retain rights to all final products, or any part thereof, produced as a result of this Project, including usage, reproduction, and publication. American Rivers and State reserve all rights in copyright works created by Contractor in the performance of work under this Project.

4.4.15 **Confidentiality of Data.**

All data, reports, information, inventions, improvements and discoveries used, compiled, developed, processed, stored or created by Contractor using Confidential and/or Sensitive Information shall be treated as Confidential and/or Sensitive Information by Contractor. No such data, reports, information, inventions, improvements or discoveries shall be released, published or made available to any person (except to State) without prior written approval from American Rivers.

4.4.16 **Protection of Information.**

Contractor shall work with American Rivers to take all necessary measures to protect Confidential or Sensitive Information to which it gains access from unauthorized access (accidental or intentional), modification, destruction, or disclosure. These measures may include, but are not limited to: password protection of electronic data, encrypted transmission of electronic data, and secure mailing and locked storage of paper and taped copies. Such measures may also include establishment of secure workstations and maintenance of a secure workstation access log. Contractor shall also apply appropriate security patches and upgrades and keep virus software up-to-date on all systems on which Confidential or Sensitive Information may be used.

Contractor shall ensure that all media, including electronic media, containing Confidential or Sensitive Information, to which they are given access are protected at the level of the most confidential or sensitive piece of data on the media. Contractor shall limit personnel allowed access to Confidential and Sensitive Information to those persons with a demonstrable business need for such access. Contractor shall maintain a current list of all personnel with access to Confidential and Sensitive Information.