



May 27, 2014

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street, Suite 536  
Oakland, CA 94612-4305

Dear Board Members:

SUBJECT: APPROVE AND AUTHORIZE THE PRESIDENT OF THE BOARD OF SUPERVISORS TO EXECUTE CONTRACT NO. 10273 WITH AGS, INC. TO PROVIDE CIVIL ENGINEERING SERVICES

RECOMMENDATION:

Approve and execute Contract No. 10273 with AGS, Inc. (Principal: Dennis Wong; Location: Oakland, CA), to provide civil engineering services for updating Operations and Maintenance Manuals for U.S. Army Corps of Engineers constructed flood control projects in Alameda County, in Flood Control Zones 2, 5 and 12, for the contract period of 06/10/14 through 05/31/16, in the amount not to exceed \$504,810.

SUMMARY/DISCUSSION:

The U.S. Army Corps of Engineers (USACE), upon construction completion of three primary flood control channels in Alameda County, prepared Operations and Maintenance (O&M) manuals for San Lorenzo Creek (Zone 2 Line B), San Leandro Creek (Zone 12 Line P) and Alameda Creek (Zone 5 Line A) in 1963, 1977 and 1977, respectively. The Alameda County Flood Control and Water Conservation District (District) subsequently assumed the role of local sponsor to maintain these three federal flood control projects in accordance with the USACE O&M Manuals. As the local sponsor, the District also has the responsibility to update the O&M Manuals of these federal flood control projects, in accordance with USACE Engineering Regulations (ER) 1110-2-401. The O&M manuals for the three above-mentioned federal projects will be updated since their initial preparation by USACE.

AGS, Inc. (AGS) will: assist District staff in updating the O&M Manuals, including consultation with the USACE staff to discuss goals and concerns; review existing O&M manuals; collect relevant information (such as maintenance records, current maintenance practices, as-built plans for repairs and improvements to the original constructed channel, surveys, hydrologic and hydraulics studies, geotechnical and geological studies, environmental studies and previous USACE inspection reports) to be incorporated in the new O&M manuals; conduct field reconnaissance to confirm existence of improvements and identify existing conditions that may need to be incorporated; conduct

videotaping/inspection of the conditions inside conduits that penetrate levees to assess their conditions; identify and document areas of special concern (such as endangered species or habitat, significant utility crossings or facilities, non-complaint vegetation, right-of-way issues, emergency access limitations, non-District facilities); prepare project-specific Emergency Action Plans which will cover preparation for and responses to project emergency conditions that could occur due to flood related failures; and prepare 30%, 60%, 90% and final version of the updated O&M manuals to be reviewed by the District and USACE.

**SELECTION AND CRITERIA:**

*A qualifications-based selection method was followed to obtain a shortlist as mandated by Government Code of Sections 4525-4529.5 for selecting professional engineering firms. Prime consultants were also required to either meet the definition of a small, local, or emerging business (SLEB) or subcontract a minimum 20 percent of the estimated contract amount with a SLEB or SLEBs.*

*A Request for Proposals (RFP) was issued on March 5, 2014, and mailed to 436 consultants providing civil engineering services in the SLEB database, and the consultant database administered by Alameda County Public Works Agency (ACPWA). The RFP was also posted on the ACPWA's website. A mandatory pre-proposal meeting was held on March 15, 2014. Three consultants submitted proposals on March 31, 2014, and subsequently participated in oral interviews at the District's office held on April 7, 2014.*

*A selection committee comprised of two District representatives and one Santa Clara Valley Water District representative evaluated the proposals, rated the consultant's proposal and the oral interviews. Evaluation criteria included relevant experience, qualifications, written proposal/oral presentation and interview, SLEB participation, and overall approach to the project. The three consultants were ranked as follows:*

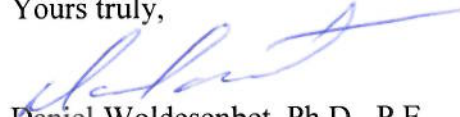
<b>Vendor</b>	<b>Location</b>	<b>Local</b>	<b>SLEB</b>	<b>Average Evaluation Points (315 max.)</b>
<i>AGS, Inc.</i>	<i>Oakland, CA</i>	<i>Yes</i>	<i>No</i>	<i>213</i>
<i>Wood Rodgers</i>	<i>Oakland, CA</i>	<i>Yes</i>	<i>No</i>	<i>185</i>
<i>NV5</i>	<i>Walnut Creek, CA</i>	<i>No</i>	<i>No</i>	<i>169</i>

*AGS, Inc. will sub-contract with WRECO, an Alameda County certified SLEB. The SLEB participation details are shown on Attachment 1.*

FINANCING:

Funding for this contract in the amount of \$504,810 is included in the FY 2013/14 budget, in Funds 21803 (Zone 2), 21807 (Zone 5) and 21810 (Zone 12), Organizations 270311, 270351 and 270381, Account 610261, Program 50600 (Professional and Specialized Services).

Yours truly,



Daniel Woldesenbet, Ph.D., P.E.  
Director of Public Works

Attachment

c: Susan Muranishi, County Administrator  
Andrew Massey, Deputy County Counsel  
Patrick O'Connell, Auditor-Controller  
Richard Conway, CAO  
Clerk of the Board

DW/MT:mt



ATTACHMENT 1

Updates to Operations and Maintenance Manuals for U.S. Army Corps of Engineers Constructed Flood Control Projects in Alameda County, in Flood Control Zones 2, 5 and 12

June 10, 2014 through May 31, 2016

Vendor	Location	Total Dollar Value of Contract	Local Participation		Emerging and Local Participation		Small and Local Participation	
			Percentage	Dollar Amount	Percentage	Dollar Amount	Percentage	Dollar Amount
AGS, Inc.	Oakland, CA	\$504,810	100%	\$504,810	0%	\$0	20%	\$100,962

Certified SLEB Subcontractors:

SLEB Subcontractor Name/Address	Certification Information	Small and Local Participation	
		Percentage	Dollar Amount
WRECO 1814 Franklin Street, Suite 608 Oakland, CA 94612	Certification #03-90320 Expiration Date: 06/30/2014	20%	\$100,962

**Professional Services Agreement**

**With**

**AGS, Inc.**

**for the**

**Updating of Operations and Maintenance Manuals for U.S. Army Corps of  
Engineers Constructed Flood Control Projects in Alameda County**

**Flood Control Zones 2, 5 and 12**

**Contract No. 10273**

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

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

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**AGREEMENT BETWEEN THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AND  
AGS, Inc.**

This Agreement is made this 10<sup>th</sup> day of June, 2014, in the City of Oakland, State of California, by and between AGS, Inc., 1814 Franklin Street, #315, Oakland, CA 94612, hereinafter referred to as “Consultant” and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as “District.”

**AGREEMENT**

**1. Definitions**

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

<b>Agreement</b>	This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A”, “B”, “C”, “D”, and “E” attached hereto.
<b>Consultant</b>	AGS, Inc.
<b>District</b>	Alameda County Flood Control and Water Conservation District
<b>Project</b>	The District’s project – Civil Engineering Services for updating of Operations and Maintenance Manuals for U.S. Army Corps of Engineers Constructed Flood Control Projects in Alameda County, Flood Control Zones 2, 5 and 12 - as further described in Appendix “A”, Scope of Services.
<b>Services</b>	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
<b>Subconsultants</b>	Consultant’s consultants, subconsultants, contractors and subcontractors, of any tier.

**2. Term of Agreement**

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from June 10, 2014 through May 31, 2016.

**3. Services Consultant Agrees to Perform**

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

contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation.

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

#### **4. Compensation**

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

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

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

supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

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

## **6. Qualified Personnel**

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Consultant through Kenneth J. Litle, AGS, Inc., 1814 Franklin Street #315, Oakland, CA 94612; and Consultant shall direct all communications to District through District Project Engineer.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

## **7. Representations**

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



## 8. Indemnification and General Liability

- 8.1(a) To the fullest extent allowed by law, Consultant shall indemnify and hold harmless the District and County of Alameda, their Board of Supervisors, officers, employees, and representatives from and against any and all claims, actions, including administrative actions, penalties, fees or fines, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, District or County employees, and the public, or damage to property, or any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District or County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement to the extent caused by the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.
- (b) The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2782.8 of the California Civil Code.
- (c) The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceeding for professional negligence would be barred by an applicable statute of repose or statute of limitation.
- 8.2 [Intentionally Omitted]
- 8.3 [Intentionally Omitted]
- 8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix "A", Services To Be Provided By Consultant.

## 9. Liability of District

- 9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix "C", Insurance, District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such

damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of District.

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

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

10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.

10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.

10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.

10.4 Consultant shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

#### **11. Insurance**

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

#### **12. Suspension of Services**

12.1 District may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

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

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

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

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

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

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

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

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

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

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

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

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

#### 14. Termination of Agreement for Convenience

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

- 14.4 Subject to provisions of Section 14.3, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.



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

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

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

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

**17. Notice to the Parties**

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

- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
  - (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
- 17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- 17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.
- To District:
- Moses Tsang, PE  
Supervising Civil Engineer  
Alameda County Flood Control and Water Conservation District  
399 Elmhurst Street, Room 201  
Hayward, CA 94544
- To Consultant:
- Dennis Wong, PE  
Principal  
AGS, Inc.  
1814 Franklin Street #315  
Oakland, CA 94612
- 17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

## 18. Ownership of Results/Work for Hire

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

**19. Audit and Inspection Records**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25.1 Consultant shall subcontract with *WRECO (1814 Franklin Street #608, Oakland, CA 94612; Principal, Han-Bin Liang)*, for services to be provided under this Agreement in an amount totaling of at least twenty percent (20%) of the contract value of this Agreement in accordance with COUNTY's Small and Emerging Locally owned Business provision.
- 25.2 Participation of a small and/or emerging local business must be maintained for the term of this contract. Consultant shall not substitute the small and/or emerging local business(s) listed in this Agreement without prior written approval from the COUNTY. COUNTY will be under no obligation to pay Consultant for the percent committed to a small and/or local business if the work is not performed or not performed by the listed small and/or emerging local business. Said requests to substitute a small and/or emerging local business shall be submitted in writing to the County Purchasing Department, ATTN: Purchasing Manager, 1401 Lakeside Drive, 9<sup>th</sup> Floor, Oakland, CA 94612.
- 25.3 Consultant shall provide SLEB utilization reports when invoicing the DISTRICT utilizing the Alameda County Compliance System. Consultant and Consultant's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the COUNTY web-based compliance system as described in Appendix E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Consultants to the certified small and/or emerging local businesses. It is the Consultant's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System.

**26. First Source Program**

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

**27. Disputes**

- 27.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District Engineer or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party, and a meeting between the District representative and principal of the Consultant shall then take place within five days of the request.
- 27.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow



Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

- 27.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

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

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

- 28.2 The parties shall execute one original and three copies of this Agreement.

## **29. Compliance with Laws**

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

## **30. Construction**

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

## **31. Miscellaneous**

- 31.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.
- 31.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

- 31.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 31.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 31.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

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

- 32.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 32.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 32.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 32.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 32.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 32.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

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

- 33.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the District, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.

- 33.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 33.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 33.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 33.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 33.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 33.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 33.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.
- 33.12 In accordance with Section 1776 of the Labor Code:

- 33.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
- 33.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
- 33.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- 33.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
- 33.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
- 33.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 33.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 33.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 33.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 33.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 33.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
- 33.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.
- 33.13.2 This provision applies to all classifications, including truckers.

- 33.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with District representatives may result in conditioning amounts of any progress payment due.
- 33.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 33.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 33.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 33.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 33.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
- 33.16.7 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM: The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 33.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 33.17.1 If District finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the District will notify the Consultant in writing of the sanctions to be imposed.
- 33.17.2 In addition, the District shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein.
- 33.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:



- 33.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 33.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 33.18.3 Terminate the contract and collect appropriate damages from the Consultant.
- 33.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future District contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

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

“District”

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

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

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

“Consultant”

AGS, Inc.

By: \_\_\_\_\_  
Dennis Wong, PE  
Principal

Date: 5/23/07

Approved as to form:  
Donna B. Ziegler, County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

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

END OF DOCUMENT

## APPENDIX A

**SERVICES TO BE PROVIDED BY CONSULTANT**

1. This is an appendix attached to, and made a part of the Agreement dated June 10, 2014, between the Alameda County Flood Control and Water Conservation District (“District”) and AGS, Inc. (“Consultant”), providing for professional services.

1.1 The District’s Proposed Project – Civil Engineering Services for updating Operations and Maintenance Manuals for U.S. Army Corps of Engineers constructed flood control projects in Alameda County, Flood Control Zones 2, 5 and 12

1.2 Consultant Team

Consultant’s team consists of

AGS, Inc. (Prime)  
Kenneth Litle, PE, PLS, LEED AP  
Dennis Wong, PE, LEED AP BD+C  
Bahram Khamenehpour, Ph.D., PE, GE  
Erik Alderson, PE  
Kristen Hanson, PE  
David Dorcich, PE  
Jeff Yip, PE  
1814 Franklin Street #315  
Oakland, CA 94612

WRECO (Small – SLEB)  
Han-Bin Liang, Ph.D., PE  
Grant Wilcox, PE, PG, CEG  
Chris Sewell, PE  
1814 Franklin Street #608  
Oakland, CA 94612

Consultant shall provide civil engineering services, and is the prime consultant, with the other consultants serving as subconsultants.

1.3 Scope of Project

Refer to Appendix A-Exhibit A-1 attached hereto.

#### 1.4 Consultant's Milestone Schedule and Deliverables

The Milestone Schedule shall be in accordance with Appendix A-Exhibit A-1 attached hereto. The deliverables shall be as specified in Appendix A-Exhibit A-1 attached hereto.

#### 1.5 Personnel and Subconsultants

Consultant shall use only the personnel and subconsultants identified herein.

### 2. General Requirements

#### 2.1 General Criteria Governing Consultant's Service

2.1.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the District grants a written exemption to a specific standard or regulation.

2.1.2 Consultant shall review existing District data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the District concerning existing conditions (including, but not limited to, existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall rely on the results of its own independent investigations and not on information provided by District. Consultant shall review supplied design information and advise District of its adequacy for Consultant's work and advise District of any further design or other services necessary to complete the Project.

2.1.3 Unless otherwise permitted in writing by District, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such evaluation in making its decision.

#### 2.2 General Scope of Consultant's Services

2.2.1 Consultant's services shall include all professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. These services will include, but are not limited to, the services outlined in Consultant's proposed scope of services annexed to this Appendix as its Exhibit A-1. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services.

2.2.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with District staff, with other governmental agencies, and with

such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other consultants).

- 2.2.3 Consultant shall engage all appropriate specialty subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the consultants as specified in Exhibit A-1, at the sole expense of Consultant. Consultant's contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant's scope of work. Consultant shall secure District's approval for any subconsultants not listed in Exhibits A-1 and this Appendix. Consultant shall require each of its subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold District harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.4 Consultant shall provide District with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation and its incorporation into the Project, including but not limited to, all requirements imposed by the Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including, but not limited to, Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

### 2.3 Coordination of Services with the Project, District's Consultant Team, and District Staff

- 2.3.1 Consultant shall fully coordinate its Services with the services of all engineering disciplines and subconsultants involved in completing the Project. For projects requiring the development of construction designs, the objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for balance of the Project, with consistency in engineering standards, any construction methods anticipated, construction details, materials specifications and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise District in writing if any District staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance. District will have responsibility to then enforce compliance.
- 2.3.2 Consultant shall provide appropriate safety training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate safety procedures for work in the Project area. Consultant shall require all personnel under Consultant's direction to wear safety equipment such as orange vests and appropriate shoes, ear, and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

### 2.4 Deliverables and Completion Dates Required Under this Agreement

Required deliverables are discussed in Section 4 below, and in Consultant's proposed scope of work annexed as Exhibit A-1. Each deliverable shall be reviewed with representatives of the District. The District shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that District reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to District, and the cost thereof is included in the fee for Basic Services. (If Consultant should disagree with District's determination, Consultant shall make the changes requested by District under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge.)

### 2.5 Monthly Progress Update

With each request for payment, Consultant shall provide District with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, Item 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, District, or any third party) of which Consultant becomes aware.

### 3. Additional Services

All Services identified in the Agreement, including, but not limited to, the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are "Basic Services". The District may request Consultant to provide services in addition to Basic Services, referred to hereafter as "Additional Services". Additional Services must be authorized by District in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities. (Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's errors, omissions, or conflicts of any type in Consultant's work product. All such services shall be performed at no cost to District, including, but not limited to, any required corrections or revisions to reports, drawings, or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services).

END OF APPENDIX A

## Exhibit A-1 Scope of Work

May 21, 2014

The scope of work for the three (3) USACE constructed projects (Alameda Creek, San Leandro Creek, and San Lorenzo Creek) has identical tasks but requires different levels of effort to complete. The required level of effort for each Project will be identified in the contract budget spreadsheet by Project, by Task, as shown in Exhibit B-1 to Appendix B.

### **Task 1: Project Coordination, Project Administration and Meetings**

- 1.1 AGS will meet and coordinate with the District and USACE staff to discuss goals, objectives, and concerns, and refine scope of work as necessary.
- 1.2 AGS will coordinate with technical staff, administrative staff and sub-consultants.
- 1.3 Meet with the District and USACE to discuss problem issues such as USACE Engineering Regulations which the District may feel are cost prohibitive, or in conflict with other federal regulations. AGS will work to reach consensus on problem issues.
- 1.4 It is anticipated that two (2) half-day meetings at District or USACE Office for each interim 30%, 60% and Final (pre-signatures) review submissions would be sufficient. AGS will prepare and distribute meeting minutes for each submission review meeting.

### **Task 2: Review of Available Data and Site Visits**

- 2.1 AGS will review current version of the O&M manual and collect relevant information to be incorporated in the new Operations and Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) manual.
- 2.2 AGS will coordinate, discuss with District M&O staff, gather and review all available maintenance records and identify current maintenance practices, which AGS will incorporate in the updated manual. It is anticipated that two (2) half-day meetings at District Office at 951 Turner Court would be sufficient.
- 2.3 Coordinate with the District staff, USACE staff, and outside agency staff as appropriate to gather and review of all existing and available documents including all constructed improvements and previous USACE inspection reports to be included and/or referenced in O&M manual update – including as-built plans, surveys and cross sections, hydrologic and hydraulic studies, geotechnical and geological studies, environmental studies/reports related to constructed improvements (by USACE, District, ACWD, EBRPD, BART, UPRR and other development connected to Alameda Creek), and other documents necessary for O&M manual updates.
- 2.4 Conduct field reconnaissance to confirm existence of improvements and identify existing conditions that may need to be incorporated into updates to O&M manual. AGS will attend site visits with the District and/or USACE staff at the start of the project. It is anticipated that half (1/2) day of site visit with District and/or USACE staff during project startup, and one (1) day of additional field work detailing and documenting observations will be sufficient.
- 2.5 Identify and document areas of special concern or unique conditions such as areas of endangered species or habitat, significant utility crossings or facilities, non-compliant vegetation, right-of-way issues, emergency access limitations, ACWD facilities such as

rubber dams and pump stations, EBRPD recreational facilities, BART and UPRR crossings, BART weir, Dry Creek Tributary, etc.

### **Task 3: Preparation of OMRR&R Manual**

Develop a dynamic “living” OMRR&R manual with simplicity and ease of use as key features. AGS will gather, review, compile all the pertinent project information described below, and prepare, and provide a complete updated OMRR&R Manual that is acceptable to the District and USACE:

The OMRR&R manual shall include the following key sections (by contract sub-Tasks):

#### **3.1 Preface**

The Preface will include Acknowledgements, Layout of the Manual, Table of Contents, and List of Figures and Appendices.

#### **3.2 Overview**

The overview will facilitate the use of the OMRR&R manual. It will briefly discuss the purpose, content, and layout of the manual. Graphics (flow charts, sketches, etc.) will be considered to add clarity.

#### **3.3 General**

A general description of the project will be provided. It will include descriptions of the authorized project purpose, significant features, and project functions. A plan of the project which depicts the project limits and significant features will be provided. A layman should be able to understand the project and feel comfortable reviewing the field conditions when using the information provided.

#### **3.4 Authorization**

The original authorizing legislation and any subsequent legislation will be cited. A summary of each citation will be included.

#### **3.5 Location and Access**

The physical setting of the project will be described in detail. The project’s relationship to political boundaries (state, county, city, and town) will be depicted. Travel instructions to the project will be included. Also, local access within and around the project limits will be discussed, including local street names. A plan will help present the information.

#### **3.6 Pertinent Information**

Significant milestones in the project’s planning and design history will be outlined in chronological order. A brief discussion of the project’s natural setting (land use, geology, soils, climate, habitat and wildlife, weather, and hydrologic data including norms and extremes, permit history, and regulatory agency mitigation requirements) will also be provided. The habitat and wildlife portion will provide a detailed discussion of the life cycle, habits, and activities of ground squirrels, and their impacts on levee maintenance. Milestones and natural setting issues that might impact OMRR&R and project purposes will be highlighted.



### 3.7 Construction History

A chronological summary of the project's construction history will be provided including all major modifications to the project. The summary will include contracts (start and completion dates and costs), features constructed, problems encountered during construction, names of contractors, contracting officers, and resident engineers. The as-built plans and specifications will be referenced and included in the appendices.

### 3.8 Project Performance

Both expected performance based on the design documents and the actual performance during significant events will be discussed. The expected performance discussion will include: the level of protection provided by various reaches of project; the consequences of flow or other conditions exceeding the project design; and the mitigation and/or benefits of all other project functions such as cultural resources, environment, and recreation. The actual performance discussion will provide a summary of the water level, reoccurrence interval, water velocity, and issues encountered for each significant event.

### 3.9 Project Cooperation Agreement

State: The (signatory) and (signatory) (provide official nomenclature) have entered into a PCA for this project on (date) as required by Public Law (99-662). A brief summary of the agreement will be provided. A copy of the duly executed PCA will be included in one of the appendices.

### 3.10 Normal Operation and Maintenance

The project operations necessary to maintain a safe and efficient functioning project that produces the benefits set forth in the project authorization will be outlined in detail. Answers to who, what, where, when, and how for each project operation and maintenance procedure will be provided. In addition conditions that trigger maintenance activities will also be provided. USACE and District will work with AGS in developing the triggers. Each project will be divided into reaches and required operation and maintenance procedures will be listed for each reach. Additional District operation and maintenance requirements required due to Routine Inspections will be provided by District and will be included. Copies of the required operation and maintenance procedures and forms to be used will be provided in the appendices.

### 3.11 Emergency Operation/Emergency Action Plan

The District may have a Universal Emergency Action Plan that covers all their projects. A project specific Emergency Action Plan will be developed for the OMRR&R Manual and will be included in the appendices. It will cover preparations for and responses to project emergency conditions that could occur due to each possible mode of failure. Additional Emergency Action Plan requirements required due to District Routine Inspections will be provided by District and should be included. Copies of emergency operation procedures and forms to be used will be provided in the appendices.

The plan will cover, but not be limited to:

- (1) Chain of responsibility.
- (2) Emergency communications network including redundancies (internal and external).
- (3) Local emergency response assistance such as fire, police, medical, and Red Cross.
- (4) State and Federal emergency response agencies.

- (5) Flood fight or other plans that may have been part of design documentation.
- (6) Temporary plans to handle possible emergencies due to “U” rated items identified in the latest Routine Inspection Report.
- (7) Required frequency to exercise plan and type(s) of exercises required.

### 3.12 Inspection and Reports

District and USACE both perform inspections of the projects. USACE performs Routine Inspections (one per year) and Periodic Inspections (dependent on consequences) on the projects. In addition, USACE has performed a Levee Screening Assessment (one time analysis) of Alameda Creek. USACE inspection procedures and related requirements will be briefly discussed and will be referenced in the main body of the manuals, and complete copies of the procedures and related requirements should be referenced and included in the appendices. The location of hard and electronic copies of the USACE inspection reports will also be referenced in the main body of the manuals.

District executes inspections to ensure the proper care and efficient operation of each project feature. The inspection requirements will be discussed briefly and referenced in the main body of the manuals and complete copies of the inspection requirements will be included in the appendices. The location of hard and electronic copies of the District inspection records and reports will also be referenced in the main body of the manuals. If additional inspection procedures are needed, they will be developed by AGS and meet the basic guidance contained in the Levee Owner’s Manual. Adaptations needed to satisfy conditions not covered in the Levee Owner’s Manual will be provided. The contents of the District inspection plan requirements will be divided by project as follows:

1. Levees
  - a. Crown/Access Road
  - b. Slopes
  - c. Interior Drainage Structures
    - i. Flap/Slide Gates
    - ii. Pipes
    - iii. Concrete
2. Natural Creek Channels
  - a. Banks
  - b. Bed
  - c. Outfalls (Cities/Others)
3. Overflow Bypass Channels
  - a. Bed
  - b. Crossover
  - c. Ponds

### 3.13 Surveillance

A surveillance program will be outlined that requires appropriate measurements, observations, and other activities be performed to ensure project benefits are being obtained. An outline of surveillance records to be maintained and made available at the time of inspection will be referenced and copies should be provided in the appendices. This program will cover, but is not limited to:

- (1) Routine stage and discharge records to show continued satisfactory performance or provide timely notice that attention is required.

- (2) Hydrographic and land surveys as required to indicate when periodic dredging, correction of bank erosion, and correction of levee settlement need to be performed.
- (3) Special surveillance as may be covered in the project design documents.

### 3.14 Repair, Replacement, and Rehabilitation

This section will include: "Repair is considered to entail those activities of a routine nature that maintain the project in a well-kept condition. Replacement covers those activities taken when a worn-out element or portion thereof is replaced. Rehabilitation refers to a set of activities as necessary to bring a deteriorated project back to its original condition. RR&R actions are to conform to the project as-built plans and specifications unless other arrangements are made with the USACE. These activities are the responsibility of the project sponsor." RR&R activities not covered in previous sections that may require unusual treatment should also be discussed in this section.

### 3.15 Notification of Distress

The applicable requirements in ER 1110-2-101 will be included so that the USACE has evidence that appropriate actions are being and will be taken.

### 3.16 Version Control

To properly track changes and regular updates, the manual shall also include a tracking log summary, which may be used to expedite preparation of periodic reports and other regulatory requirements.

### Glossary

The OMRR&R manual shall also include an appendix section consisting of the following items (preliminary):

- As-Built Plans (gathered, organized, and referenced as part of Task 3.5)
- Project Cooperation Agreement (gathered, organized, prepared and referenced as part of Task 3.8)
- Emergency Action Plan (prepared and referenced as part of Task 3.10)
- Hydraulics and Hydrology Reports (gathered, organized, and referenced as part of Task 3.5)
- Vegetation Management (prepared and referenced as part of Task 3.9)
- Designated Land Uses (prepared and referenced as part of Task 3.5)
- Previous available Corps inspection reports (gathered, organized, prepared and referenced as part of Task 3.11)
- Other latest reports, etc. (gathered, organized, and referenced as part of Task 3.5)
- USACE Inspection Checklists
- USACE Inspection Report & Rating Guides
- USACE Semi-Annual Report Forms
- Details for Flood Fighting Methods
- Rehabilitation Request Forms

The OMRR&R manual shall feature an index section for cross-referencing and locating specific information in the manual.

The order of the manual sections may be reconfigured for more efficient use, similar to the manuals that AGS prepared for the Santa Clara Valley Water District.

We assume that the District will provide specific exhibits, figures, reports and pertinent calculations, where applicable and available, such as:

- Locations Maps
- Haul Routes
- Creek Cross-sections
- Project Boundaries
- Emergency Access Maps & Contact List
- Specific Vegetation Management Exhibits
- Special Management Areas
- Project Maintenance Activity maps
- Managed Habitat Site Maps
- Outstanding Mitigation Requirements
- Sedimentation Monitoring Site Exhibits
- Adjacent Parcel Numbers and Ownership
- Hydrology & Hydraulics Exhibits, Profiles and Calculations
- Geotechnical Information and Reports
- Previous Inspection Reports
- Storm Drain Outfall Maps
- Encroachment and Utility Maps
- As-Built Drawings and Construction History
- Project Cooperation Agreements
- General Information

**Task 4: Videography**

Provide condition assessment with equipment capable of recording high resolution video footage and capturing digital images of problem area(s), in addition to written report documentation a minimum of 100' of all underground storm drain outfalls into the creeks. The firm performing the high resolution video recording must be specialized and have experience in performing this type of work. The video footage should have reference to beginning point, be able to measure/tracked distance traveled in the pipe, and correlate the video and/or photo image used in the written assessment report.

The written report shall have a description of the underground pipe location in relation to the main channel, a brief discussion of assessments including reference to high resolution video footage and photos taken for problem area(s), date and time the assessment is being conducted. A pre-final draft report along with the video and photos shall be provided to the District for review and comments/acceptance, prior to final for signature.

A DVD containing the high resolution video and digital photos, the final signed report in pdf and in Word shall be provide to the District, along with two (2) hard copies of the final report.

**Task 5: GIS Coordination**

Coordinate to provide the District with any data gathered for the O&M manuals in order to incorporate information into District's GIS database.

**Assumptions**

Available manuals, reports, studies, calculations, drawings, photographs, and miscellaneous documents necessary for the preparation of the OMRR&R manual will be uploaded into a file share (FTP) site available to AGS staff after date of consultant contract award.

**Deliverables**

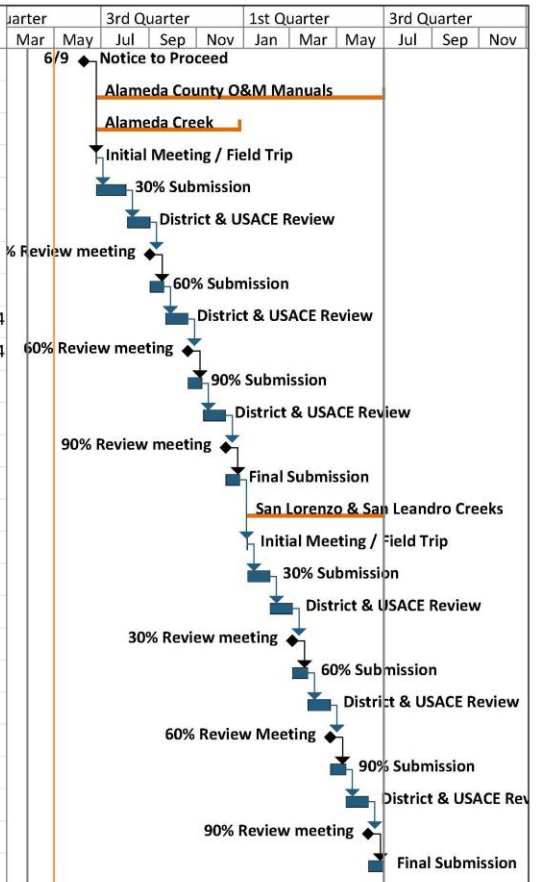
Submissions:

- 30% Completion - Main Text including Emergency Action Plan  
District - electronic copy (both pdf and MS Word), 4 hard copies
- 60% Completion - Main Text including Emergency Action Plan  
District - electronic copy (both pdf and MS Word), 4 hard copies
- 90% Completion - Entire Manual and referenced Appendices  
District - electronic copy (both pdf and MS Word), 4 hard copies
- 100% Completion - Entire Manual and referenced Appendices  
District - electronic copy (both pdf and MS Word), 4 hard copies

**Anticipated Schedule**

The anticipated MS Schedule will be updated periodically, as necessary, to reflect milestones and key delivery dates, based on on-going discussions with District staff. The following is the anticipated schedule with durations in working days:

ID	Task Name	Duration	Start	Finish	2nd Quarter				3rd Quarter				1st Quarter			3rd Quarter		
					Mar	May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov			
1	Notice to Proceed	0 days	Mon 6/9/14	Mon 6/9/14		6/9												
2	<b>Alameda County O&amp;M Manuals</b>	<b>266 days</b>	<b>Tue 6/24/14</b>	<b>Tue 6/30/15</b>														
3	<b>Alameda Creek</b>	<b>134 days</b>	<b>Tue 6/24/14</b>	<b>Fri 12/26/14</b>														
4	Initial Meeting / Field Trip	1 day	Tue 6/24/14	Tue 6/24/14														
5	30% Submission	28 days	Wed 6/25/14	Fri 8/1/14														
6	District & USACE Review	21 days	Mon 8/4/14	Mon 9/1/14														
7	30% Review meeting	0 days	Mon 9/1/14	Mon 9/1/14														
8	60% Submission	14 days	Tue 9/2/14	Fri 9/19/14														
9	District & USACE Review	21 days	Mon 9/22/14	Mon 10/20/14														
10	60% Review meeting	0 days	Mon 10/20/14	Mon 10/20/14														
11	90% Submission	14 days	Tue 10/21/14	Fri 11/7/14														
12	District & USACE Review	21 days	Mon 11/10/14	Mon 12/8/14														
13	90% Review meeting	0 days	Mon 12/8/14	Mon 12/8/14														
14	Final Submission	14 days	Tue 12/9/14	Fri 12/26/14														
15	<b>San Lorenzo &amp; San Leandro Creeks</b>	<b>127 days</b>	<b>Mon 1/5/15</b>	<b>Tue 6/30/15</b>														
16	Initial Meeting / Field Trip	1 day	Mon 1/5/15	Mon 1/5/15														
17	30% Submission	21 days	Tue 1/6/15	Tue 2/3/15														
18	District & USACE Review	21 days	Wed 2/4/15	Wed 3/4/15														
19	30% Review meeting	0 days	Wed 3/4/15	Wed 3/4/15														
20	60% Submission	14 days	Thu 3/5/15	Tue 3/24/15														
21	District & USACE Review	21 days	Wed 3/25/15	Wed 4/22/15														
22	60% Review Meeting	0 days	Wed 4/22/15	Wed 4/22/15														
23	90% Submission	14 days	Thu 4/23/15	Tue 5/12/15														
24	District & USACE Review	21 days	Wed 5/13/15	Wed 6/10/15														
25	90% Review meeting	0 days	Wed 6/10/15	Wed 6/10/15														
26	Final Submission	14 days	Thu 6/11/15	Tue 6/30/15														





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**EXHIBIT A-1  
FEE SCHEDULE**  
[Effective 1/1/2014]

<b><u>PROFESSIONAL AND SUPPORT SERVICES</u></b>	<b><u>2014 HOURLY RATE</u></b>
Senior Principal A/E <sup>1</sup>	\$200
Principal A/E	\$175
Senior A/E	\$150
Project A/E	\$130
Senior Staff A/E	\$115
Staff A/E	\$105
CAD Drafter <sup>3</sup>	\$ 95
Senior Field Technician <sup>2,3</sup>	\$ 90
Field Technician <sup>2,3</sup>	\$ 80
Project Administrator <sup>3</sup>	\$ 70
Clerical Administrator <sup>3</sup>	\$ 60

<sup>1</sup> Architects, Engineers, Scientists, Geologists

<sup>2</sup> Field technician services require a minimum of 4 consecutive hours per day followed by 2-hour increments. We require 24 hours advance notice for scheduling. Two hours will be charged for any cancellation within 24 hours.

<sup>3</sup> Overtime rates for work in excess of 8 hours per day or 40 hours per week are 1.5 times the regular hourly rates for weekdays and Saturday and 2.0 times the regular hourly rates for Sunday and holidays. Overtime for professional services is billed at the regular hourly rate.

**OTHER DIRECT COSTS [ODC]**

Reimbursable for other direct costs are billed at cost plus 12 percent. These reimbursable costs include, but are not limited to:

1. Consultant and Subcontracted Services
2. Travel: Airfare, Auto Rental, Parking, Toll
3. Subsistence: Lodging, Meals and Incidentals
4. Auto Mileage: \$0.56 per mile
5. Field Vehicles: \$65 per day
6. Nuclear Gauge: \$10 per hour
7. Other Direct Expenses: Field Expenses, Equipment Rental, Special Fees, Permits, Printing, Reproduction, Express Mail, Delivery, etc.
8. Rates for health/safety and field instrumentation equipment rental will be furnished upon request.

The Fee Schedule is subject to revision periodically or at the end of each calendar year. See Appendix B of Contract Agreement for rate adjustment conditions and limitation.

## APPENDIX B

**PAYMENTS TO CONSULTANT**

This is an appendix attached to, and made a part of the Agreement dated June 10, 2014, between the Alameda County Flood Control and Water Conservation District (“District”) and AGS, Inc. (“Consultant”), providing for professional services.

**1. Amount of Compensation for Services of Consultant**

- 1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed Five Hundred Four Thousand Eight Hundred and Ten Dollars (\$504,810) referred to hereafter as the Not To Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- 1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by District.

**2. Monthly Billing Breakdown**

- 2.1 District shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for District’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.

**3. Methods of Payment to Consultant**

- 3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.
- 3.2 For Additional Services. The District shall pay Consultant for Additional Services, as defined below, as follows:
  - 3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at District’s option, based on hourly rates per Consultant’s billing schedule with an agreed Not-to-Exceed amount.



3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefor.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the District.

#### 4. Definitions

4.1 “Additional Services” mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.

4.2 The Billing Rates used as a basis for payment apply to all of Consultant’s and Subconsultants’ principals, professional personnel and others engaged directly on the Project, and are set forth in the Scope of Project (Exhibit A-1 attached to Appendix A). Any future adjustments to the 2014 fee schedule is subject to negotiation for approval by the District. In any case, the maximum adjustment shall not exceed 3%.

END OF APPENDIX B



Task	Task Description	HOURS					LABOR				ODCs	ODCs MARKUP	SUB MARKUP	TOTAL
		AGS					AGS	WRECO (SLEB)	Subtotal Subs	Total Labor				
		Principal A/E	Project A/E	Senior Staff A/E	CAD / Eng Tech	Project Administrator								
	Hourly Billing Rate	\$175.00	\$130.00	\$115.00	\$95.00	\$70.00						10%	5%	
<b>1</b>	<b>Alameda Creek</b>													
<b>1.1</b>	<b>Project Coordination, Administration and Meetings</b>													
1.1.1	Project Initiation	4	4				\$ 1,220	\$ 400	\$ 400	\$ 1,620	\$ 100	\$ 10	\$ 20	\$ 1,750
1.1.2	Project Coordination and Management	40	60				\$ 14,800	\$ 1,400	\$ 1,400	\$ 16,200	\$ 500	\$ 50	\$ 70	\$ 16,820
1.1.3	USACE Levee Safety Program Meetings	4	4				\$ 1,220	\$ 400	\$ 400	\$ 1,620	\$ 100	\$ 10	\$ 20	\$ 1,750
1.1.4	Submittal Review Meetings	12	12				\$ 3,660	\$ 800	\$ 800	\$ 4,460	\$ 300	\$ 30	\$ 40	\$ 4,830
	<b>Subtotal (Task 1.1)</b>	<b>60</b>	<b>80</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 20,900</b>	<b>\$ 3,000</b>	<b>\$ 3,000</b>	<b>\$ 23,900</b>	<b>\$ 1,000</b>	<b>\$ 100</b>	<b>\$ 150</b>	<b>\$ 25,150</b>
<b>1.2</b>	<b>Review of Available Data and Site Visits</b>													
1.2.1	Review Existing O&M Manual	4	8	12			\$ 3,120		\$ -	\$ 3,120	\$ 100	\$ 10	\$ -	\$ 3,230
1.2.2	Obtain and Review Maintenance Records	2	12	12			\$ 3,290		\$ -	\$ 3,290	\$ 100	\$ 10	\$ -	\$ 3,400
1.2.3	Obtain and Review Project Data	16	40	56			\$ 14,440		\$ -	\$ 14,440	\$ 400	\$ 40	\$ -	\$ 14,880
1.2.4	Field Reconnaissance	16	16	16			\$ 6,720		\$ -	\$ 6,720	\$ 300	\$ 30	\$ -	\$ 7,050
1.2.5	Document Special Areas & Unique Conditions	2	4	4			\$ 1,330		\$ -	\$ 1,330	\$ 100	\$ 10	\$ -	\$ 1,440
	<b>Subtotal (Task 1.2)</b>	<b>40</b>	<b>80</b>	<b>100</b>	<b>0</b>	<b>0</b>	<b>\$ 28,900</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 28,900</b>	<b>\$ 1,000</b>	<b>\$ 100</b>	<b>\$ -</b>	<b>\$ 30,000</b>
<b>1.3</b>	<b>Preparation of OMRR&amp;R Manual</b>													
1.3.1	Preface	1	2	2		8	\$ 1,225		\$ -	\$ 1,225	\$ 1,000	\$ 100	\$ -	\$ 2,325
1.3.2	Overview	1	2	2	20	8	\$ 3,125		\$ -	\$ 3,125		\$ -	\$ -	\$ 3,125
1.3.3	General	4	8	8		8	\$ 3,220		\$ -	\$ 3,220		\$ -	\$ -	\$ 3,220
1.3.4	Authorization	2	4	4		4	\$ 1,610		\$ -	\$ 1,610		\$ -	\$ -	\$ 1,610
1.3.5	Location and Access	4	8	10	14	4	\$ 4,500		\$ -	\$ 4,500		\$ -	\$ -	\$ 4,500
1.3.6	Pertinent Information	10	18	30		8	\$ 8,100		\$ -	\$ 8,100		\$ -	\$ -	\$ 8,100
1.3.7	Construction History	6	8	12	10	8	\$ 4,980		\$ -	\$ 4,980		\$ -	\$ -	\$ 4,980
1.3.8	Project Performance	4	8	8		4	\$ 2,940		\$ -	\$ 2,940		\$ -	\$ -	\$ 2,940
1.3.9	Project Cooperation Agreement	4	8	8		4	\$ 2,940		\$ -	\$ 2,940		\$ -	\$ -	\$ 2,940
1.3.10	Normal Operation & Maintenance	28	48	48	28	8	\$ 19,880		\$ -	\$ 19,880		\$ -	\$ -	\$ 19,880
1.3.11	Emergency Operation / Emergency Action Plan	16	48	48	30	8	\$ 17,970		\$ -	\$ 17,970		\$ -	\$ -	\$ 17,970
1.3.12	Inspection and Reports	6	12	12		4	\$ 4,270		\$ -	\$ 4,270		\$ -	\$ -	\$ 4,270
1.3.13	Surveillance	8	10	10		6	\$ 4,270		\$ -	\$ 4,270		\$ -	\$ -	\$ 4,270
1.3.14	Repair, Replacement and Rehabilitation	16	36	30	16	8	\$ 13,010		\$ -	\$ 13,010		\$ -	\$ -	\$ 13,010
1.3.15	Notification of Distress	4	8	8		4	\$ 2,940		\$ -	\$ 2,940		\$ -	\$ -	\$ 2,940
1.3.16	Version Control	4	8	8		8	\$ 3,220		\$ -	\$ 3,220		\$ -	\$ -	\$ 3,220
	<b>Subtotal (Task 1.3)</b>	<b>118</b>	<b>236</b>	<b>248</b>	<b>118</b>	<b>102</b>	<b>\$ 98,200</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 98,200</b>	<b>\$ 1,000</b>	<b>\$ 100</b>	<b>\$ -</b>	<b>\$ 99,300</b>
<b>1.4</b>	<b>Videography</b>													
		2	12					\$ 28,000	\$ 28,000	\$ 29,910			\$ 1,400	\$ 31,310
<b>1.5</b>	<b>Coordinate to Provide GIS Information</b>													
		8	40	24			\$ 9,360	\$ -	\$ -	\$ 9,360		\$ -	\$ -	\$ 9,360
<b>1.6</b>	<b>Address Unforeseen Field Conditions (To Be Authorized by District Project Manager)</b>									\$ -				\$ 50,000
	<b>Subtotal (Tasks 1.4, 1.5 and 1.6)</b>	<b>10</b>	<b>52</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>\$ 9,360</b>	<b>\$ 28,000</b>	<b>\$ 28,000</b>	<b>\$ 39,270</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,400</b>	<b>\$ 9,360</b>
	<b>Total (Project 1)</b>	<b>228</b>	<b>448</b>	<b>372</b>	<b>118</b>	<b>102</b>	<b>\$ 157,360</b>	<b>\$ 31,000</b>	<b>\$ 31,000</b>	<b>\$ 190,270</b>	<b>\$ 3,000</b>	<b>\$ 300</b>	<b>\$ 1,550</b>	<b>\$ 245,120</b>



Task	Task Description	HOURS					LABOR				ODCs	ODCs MARKUP	SUB MARKUP	TOTAL
		AGS					AGS	WRECO (SLEB)	Subtotal Subs	Total Labor				
		Principal A/E	Project A/E	Senior Staff A/E	CAD / Eng Tech	Project Administrator								
	Hourly Billing Rate	\$175.00	\$130.00	\$115.00	\$95.00	\$70.00						10%	5%	
<b>2</b>	<b>San Leandro Creek</b>													
<b>2.1</b>	<b>Project Coordination, Administration and Meetings</b>													
2.1.1	Project Initiation	2	2				\$ 610	\$ 1,000	\$ 1,000	\$ 1,610	\$ 50	\$ 5	\$ 50	\$ 1,715
2.1.2	Project Coordination and Management	12	12				\$ 3,660	\$ 8,000	\$ 8,000	\$ 11,660	\$ 200	\$ 20	\$ 400	\$ 12,280
2.1.3	USACE Levee Safety Program Meetings	2	2				\$ 610	\$ 1,000	\$ 1,000	\$ 1,610	\$ 50	\$ 5	\$ 50	\$ 1,715
2.1.4	Submittal Review Meetings	4	4				\$ 1,220	\$ 2,000	\$ 2,000	\$ 3,220	\$ 200	\$ 20	\$ 100	\$ 3,540
	<b>Subtotal (Task 2.1)</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 6,100</b>	<b>\$ 12,000</b>	<b>\$ 12,000</b>	<b>\$ 18,100</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ 600</b>	<b>\$ 19,250</b>
<b>2.2</b>	<b>Review of Available Data and Site Visits</b>													
2.2.1	Review Existing O&M Manual	2	4				\$ 870	\$ 2,000	\$ 2,000	\$ 2,870	\$ 50	\$ 5	\$ 100	\$ 3,025
2.2.2	Obtain and Review Maintenance Records		4				\$ 520	\$ 1,000	\$ 1,000	\$ 1,520	\$ 50	\$ 5	\$ 50	\$ 1,625
2.2.3	Obtain and Review Project Data	2	6				\$ 1,130	\$ 8,000	\$ 8,000	\$ 9,130	\$ 200	\$ 20	\$ 400	\$ 9,750
2.2.4	Field Reconnaissance	2	4				\$ 870	\$ 3,000	\$ 3,000	\$ 3,870	\$ 150	\$ 15	\$ 150	\$ 4,185
2.2.5	Document Special Areas & Unique Conditions	2	2				\$ 610	\$ 1,000	\$ 1,000	\$ 1,610	\$ 50	\$ 5	\$ 50	\$ 1,715
	<b>Subtotal (Task 2.2)</b>	<b>8</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 4,000</b>	<b>\$ 15,000</b>	<b>\$ 15,000</b>	<b>\$ 19,000</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ 750</b>	<b>\$ 20,300</b>
<b>2.3</b>	<b>Preparation of OMRR&amp;R Manual</b>													
2.3.1	Preface	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585	\$ 500	\$ 50	\$ 50	\$ 2,185
2.3.2	Overview	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585		\$ -	\$ 50	\$ 1,635
2.3.3	General	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585		\$ -	\$ 50	\$ 1,635
2.3.4	Authorization	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.5	Location and Access	1	1			2	\$ 445	\$ 2,000	\$ 2,000	\$ 2,445		\$ -	\$ 100	\$ 2,545
2.3.6	Pertinent Information	1	1			2	\$ 445	\$ 5,000	\$ 5,000	\$ 5,445		\$ -	\$ 250	\$ 5,695
2.3.7	Construction History	2	2			2	\$ 750	\$ 3,000	\$ 3,000	\$ 3,750		\$ -	\$ 150	\$ 3,900
2.3.8	Project Performance	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.9	Project Cooperation Agreement	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.10	Normal Operation & Maintenance	2	2			2	\$ 750	\$ 12,000	\$ 12,000	\$ 12,750		\$ -	\$ 600	\$ 13,350
2.3.11	Emergency Operation / Emergency Action Plan	2	2			2	\$ 750	\$ 10,000	\$ 10,000	\$ 10,750		\$ -	\$ 500	\$ 11,250
2.3.12	Inspection and Reports	1	1			2	\$ 445	\$ 3,000	\$ 3,000	\$ 3,445		\$ -	\$ 150	\$ 3,595
2.3.13	Surveillance	1	1			2	\$ 445	\$ 3,000	\$ 3,000	\$ 3,445		\$ -	\$ 150	\$ 3,595
2.3.14	Repair, Replacement and Rehabilitation	2	2			2	\$ 750	\$ 9,000	\$ 9,000	\$ 9,750		\$ -	\$ 450	\$ 10,200
2.3.15	Notification of Distress	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.16	Version Control	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585		\$ -	\$ 50	\$ 1,635
	<b>Subtotal (Task 2.3)</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>\$ 8,900</b>	<b>\$ 55,000</b>	<b>\$ 55,000</b>	<b>\$ 63,900</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ 2,750</b>	<b>\$ 67,200</b>
2.4	Videography	1	2				\$ 435	\$ 6,000	\$ 6,000	\$ 6,435		\$ -	\$ 300	\$ 6,735
2.5	Coordinate to Provide GIS Information	4	24	12			\$ 5,200	\$ -	\$ -	\$ 5,200		\$ -	\$ -	\$ 5,200
2.6	Address Unforeseen Field Conditions (To Be Authorized by District Project Manager)									\$ -				\$ 5,000
	<b>Subtotal (Tasks 2.4, 2.5 and 2.6)</b>	<b>5</b>	<b>26</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>\$ 5,635</b>	<b>\$ 6,000</b>	<b>\$ 6,000</b>	<b>\$ 11,635</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 300</b>	<b>\$ 11,935</b>
	<b>Total (Project 2)</b>	<b>53</b>	<b>86</b>	<b>12</b>	<b>0</b>	<b>40</b>	<b>\$ 24,635</b>	<b>\$ 88,000</b>	<b>\$ 88,000</b>	<b>\$ 112,635</b>	<b>\$ 1,500</b>	<b>\$ 150</b>	<b>\$ 4,400</b>	<b>\$ 123,685</b>



Task	Task Description	HOURS					LABOR				ODCs	ODCs MARKUP	SUB MARKUP	TOTAL
		AGS					AGS	WRECO (SLEB)	Subtotal Subs	Total Labor				
		Principal A/E	Project A/E	Senior Staff A/E	CAD / Eng Tech	Project Administrator								
Hourly Billing Rate		\$175.00	\$130.00	\$115.00	\$95.00	\$70.00					10%	5%		
<b>3</b>	<b>San Lorenzo Creek</b>													
<b>3.1</b>	<b>Project Coordination, Administration and Meetings</b>													
3.1.1	Project Initiation	2	2				\$ 610		\$ -	\$ 610	\$ 50	\$ 5	\$ -	\$ 665
3.1.2	Project Coordination and Management	28	40				\$ 10,100		\$ -	\$ 10,100	\$ 200	\$ 20	\$ -	\$ 10,320
3.1.3	USACE Levee Safety Program Meetings	2	2				\$ 610		\$ -	\$ 610	\$ 50	\$ 5	\$ -	\$ 665
3.1.4	Submittal Review Meetings	8	16				\$ 3,480		\$ -	\$ 3,480	\$ 200	\$ 20	\$ -	\$ 3,700
	<b>Subtotal (Task 3.1)</b>	<b>40</b>	<b>60</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 14,800</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 14,800</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ -</b>	<b>\$ 15,350</b>
<b>3.2</b>	<b>Review of Available Data and Site Visits</b>													
3.2.1	Review Existing O&M Manual	2	8	8			\$ 2,310		\$ -	\$ 2,310	\$ 50	\$ 5	\$ -	\$ 2,365
3.2.2	Obtain and Review Maintenance Records	2	8	8			\$ 2,310		\$ -	\$ 2,310	\$ 50	\$ 5	\$ -	\$ 2,365
3.2.3	Obtain and Review Project Data	8	28	48			\$ 10,560		\$ -	\$ 10,560	\$ 200	\$ 20	\$ -	\$ 10,780
3.2.4	Field Reconnaissance	6	12	12			\$ 3,990		\$ -	\$ 3,990	\$ 150	\$ 15	\$ -	\$ 4,155
3.2.5	Document Special Areas & Unique Conditions	2	4	4			\$ 1,330		\$ -	\$ 1,330	\$ 50	\$ 5	\$ -	\$ 1,385
	<b>Subtotal (Task 3.2)</b>	<b>20</b>	<b>60</b>	<b>80</b>	<b>0</b>	<b>0</b>	<b>\$ 20,500</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 20,500</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ -</b>	<b>\$ 21,050</b>
<b>3.3</b>	<b>Preparation of OMRR&amp;R Manual</b>													
3.3.1	Preface	1	2	2		4	\$ 945		\$ -	\$ 945	\$ 500	\$ 50	\$ -	\$ 1,495
3.3.2	Overview	1	2	2	4	4	\$ 1,325		\$ -	\$ 1,325		\$ -	\$ -	\$ 1,325
3.3.3	General	1	2	2		4	\$ 945		\$ -	\$ 945		\$ -	\$ -	\$ 945
3.3.4	Authorization	1	2	2		2	\$ 805		\$ -	\$ 805		\$ -	\$ -	\$ 805
3.3.5	Location and Access	2	8	8	4	2	\$ 2,830		\$ -	\$ 2,830		\$ -	\$ -	\$ 2,830
3.3.6	Pertinent Information	6	16	16		2	\$ 5,110		\$ -	\$ 5,110		\$ -	\$ -	\$ 5,110
3.3.7	Construction History	6	10	10	4	2	\$ 4,020		\$ -	\$ 4,020		\$ -	\$ -	\$ 4,020
3.3.8	Project Performance	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.9	Project Cooperation Agreement	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.10	Normal Operation & Maintenance	20	30	30	20	2	\$ 12,890		\$ -	\$ 12,890		\$ -	\$ -	\$ 12,890
3.3.11	Emergency Operation / Emergency Action Plan	18	30	30	10	2	\$ 11,590		\$ -	\$ 11,590		\$ -	\$ -	\$ 11,590
3.3.12	Inspection and Reports	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.13	Surveillance	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.14	Repair, Replacement and Rehabilitation	12	26	26	10	2	\$ 9,560		\$ -	\$ 9,560		\$ -	\$ -	\$ 9,560
3.3.15	Notification of Distress	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.16	Version Control	2	8	8		4	\$ 2,590		\$ -	\$ 2,590		\$ -	\$ -	\$ 2,590
	<b>Subtotal (Task 3.3)</b>	<b>80</b>	<b>176</b>	<b>176</b>	<b>52</b>	<b>40</b>	<b>\$ 64,860</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 64,860</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ -</b>	<b>\$ 65,410</b>
<b>3.4</b>	<b>Videography</b>	1	6				\$ 955	\$ 16,000	\$ 16,000	\$ 16,955		\$ -	\$ 800	\$ 17,755
<b>3.5</b>	<b>Coordinate to Provide GIS Information</b>	4	30	16			\$ 6,440	\$ -	\$ -	\$ 6,440		\$ -	\$ -	\$ 6,440
<b>3.6</b>	<b>Address Unforseen Field Conditions (To Be Authorized by District Project Manager)</b>									\$ -				\$ 10,000
	<b>Subtotal (Tasks 3.4, 3.5 and 3.6)</b>	<b>5</b>	<b>36</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>\$ 7,395</b>	<b>\$ 16,000</b>	<b>\$ 16,000</b>	<b>\$ 23,395</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 800</b>	<b>\$ 24,195</b>
	<b>Total (Project 3)</b>	<b>145</b>	<b>332</b>	<b>272</b>	<b>52</b>	<b>40</b>	<b>\$ 107,555</b>	<b>\$ 16,000</b>	<b>\$ 16,000</b>	<b>\$ 123,555</b>	<b>\$ 1,500</b>	<b>\$ 150</b>	<b>\$ 800</b>	<b>\$ 136,005</b>
	<b>Grand Total</b>	<b>426</b>	<b>866</b>	<b>656</b>	<b>170</b>	<b>182</b>	<b>\$ 289,550</b>	<b>\$ 135,000</b>	<b>\$ 135,000</b>	<b>\$ 426,460</b>	<b>\$ 6,000</b>	<b>\$ 600</b>	<b>\$ 6,750</b>	<b>\$ 504,810</b>

Total Fee \$ 504,810  
Total SLEB \$ 135,000  
% SLEB 27%

## APPENDIX C

## INSURANCE

This is an appendix attached to, and made a part of the Agreement dated June 10, 2014, by and between the Alameda County Flood Control and Water Conservation District (“District”) and AGS, Inc. (“Consultant”), providing for professional services.

- A. Consultant is required to maintain at all times during the performance of this Agreement the following insurance coverage: The Certificate of Insurance is attached hereto as Appendix C-Exhibit 1.
1. Workers’ Compensation Employers’ Liability limits not less than \$1,000,000 each occurrence, \$1,000,000 per disease, and \$1,000,000 each employee. Consultant’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California. Employers’ Liability Coverage endorsement shall specify as entity and endorsement holder the District, its Board of Supervisors, the individual members thereof, and all District officers, agents, employees, and volunteers.
  2. Occurrence-based Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$2,000,000 Aggregate. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant’s or subcontractor’s or subconsultant’s operations.
  3. Occurrence-based Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 million each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
  4. Professional Liability Insurance with limits not less than \$1,000,000 each claim and \$3,000,000 in the aggregate with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$75,000 each claim.
- B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as Additional Insured County of Alameda, District, its Board of Supervisors, the individual members thereof, and all County and District officers, agents, employees, and volunteers.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the addition of one or more entities shall not affect the insurer's limit of liability.
- C. All policies shall be endorsed to provide thirty (30) days advance written notice to District of cancellation, and certificates of all policies and endorsements shall be mailed to District as provided in the Agreement per Paragraph 17.1.3.
  - D. District may, at its sole option, terminate this Agreement on 15 days' notice to Consultant (but during such 15-day period, Consultant has the opportunity to cure the default) in the event of any lapse of required insurance coverage. District may, at its option, secure sufficient insurance coverage to replace any required insurance coverage which has lapsed, and Consultant hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage.
  - E. Insurance shall be maintained through an insurer and with deductible amounts acceptable to District. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement, without lapse, and shall provide a discovery period for a period of three years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made within four years after expiration of the Agreement, such claims shall be covered by such claims-made policies.
  - F. Certificates of insurance, in form and with insurers satisfactory to District, evidencing all coverages above shall be furnished to District before commencing any operation under this Agreement, with complete copies of policies promptly upon District request.
  - G. Approval of the insurance by District shall not relieve or decrease the liability of Consultant hereunder.
  - H. If Consultant is an association or partnership, the association or partnership shall be insured by any one of the following methods:
    1. Separate insurance policies issued with the association or partnership as named insured.
    2. All insurance policies required by this Agreement of one of the participants to include the association or partnership as named insured.
    3. The association or partnership must be a named insured on all of the policies required by this Agreement.

END OF APPENDIX C

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/13/2014


<b>PRODUCER</b> Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> AGS, Inc. 5 Freelon Street San Francisco, CA 94107-3617	INSURER A: <b>American Ins. Co.</b>	
	INSURER B: <b>American Automobile Ins. Co.</b>	<b>21849</b>
	INSURER C: <b>Hudson Insurance Company</b>	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	AZC80891201	10/28/13	10/28/14	EACH OCCURRENCE	\$2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$2,000,000
						GENERAL AGGREGATE	\$4,000,000
						PRODUCTS - COMP/OP AGG	\$4,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AZC80891201	10/28/13	10/28/14	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
							\$
B		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WZP81012104	09/01/13	09/01/14	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
C		<b>OTHER Professional Liability</b>	AEE7211406	10/10/13	10/10/14	<b>\$1,000,000 per claim</b> <b>\$1,000,000 annl aggr.</b>	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**General Liability Excludes Claims Arising Out of the Performance of Professional Services.**  
**Project Name/Number: Alameda County O&M Manuals/AGS-14-021.**  
**County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives are additional insureds as respects to General & Automobile Liability per policy form wording. See attachments.**

<b>CERTIFICATE HOLDER</b> County of Alameda Flood Control & Water Conservation District Attn: Anita Franklin 399 Elmhurst Street Hayward, CA 94544	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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# Additional Insured - Owners, Lessees or Contractors - AB 90 67 12 93

Policy Amendment Section II

Insured AGS, Inc.

Policy Number AZC80891201

Producer Dealey, Renton & Associates

Effective Date 10/28/13

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## Schedule

### Name of Person(s) or Organization(s)

County of Alameda Flood Control &  
Water Conservation District  
Attn: Anita Franklin  
399 Elmhurst Street

(If no entry appears above, information required to complete this Endorsement will be shown in the Declarations as applicable to this Endorsement.)

The following is added to Part I - WHO IS AN INSURED in the Business Liability Section of this policy

arising out of **your work** for that insured by or for you.

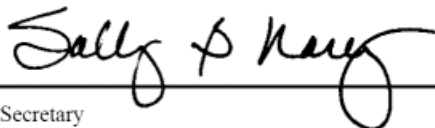
5. The person or organization shown in the Schedule is also an insured, but only with respect to liability

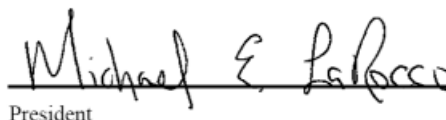
All other terms and conditions of the policy apply.

SCHEDULE NAME OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS CONT: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives

This Form must be attached to Change Endorsement when issued after the policy is written.

One of the **Fireman's Fund Insurance Companies** as named in the policy

  
Secretary

  
President



# ABC MultiCover - AB 91 89 08 07

This endorsement modifies insurance provided under the following:

## American Business Coverage

Your policy is broadened and clarified as follows:

### 1. Non Employment Discrimination Liability

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 17. Personal Injury is amended to include:

f. **Discrimination**

B. **Section III - Definitions**, Item 2. Advertising Injury is amended to include:

e. **Discrimination**

C. **Section III - Definitions** is amended to include:

30. **Discrimination** means the unlawful treatment of individuals based on race, color, ethnic origin, gender, religion, age, or sexual preference.

D. **Section II - Liability Coverage, Part H. Exclusions**, Item 1.p **Personal Injury** or **Advertising Injury** is amended to include:

(11) Arising out of **discrimination** directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured; or

(12) Arising out of **discrimination** directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling,

permanent lodging, or premises by or at the direction of any insured; or

(13) Arising out of **discrimination**, if insurance thereof is prohibited by law; or

(14) Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of **discrimination**.

### 2. Blanket Additional Insured

**Section II - Liability Coverage, Part I. Who Is An Insured**, Item 2. is amended to include:

f. Any person or organization that you are required by a written **insured contract** to include as an insured, subject to all of the following provisions:

(1) Coverage is limited to their liability arising out of:

(a) the ownership, maintenance or use of that part of the premises, or land owned by, rented to, or leased to you; or


(b) your ongoing operations performed for that insured; or

(c) that insured's financial control of you; or

(d) the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s); or

This Form must be attached to Change Endorsement when issued after the policy is written.

One of the **Fireman's Fund Insurance Companies** as named in the policy



Secretary



President

- (e) a state or political subdivision permit issued to you.
- (2) Coverage does not apply to any **occurrence** or offense:
  - (a) which took place before the execution of, or subsequent to the completion or expiration of, the written **insured contract**, or
  - (b) which takes place after you cease to be a tenant in that premises.
- (3) With respect to architects, engineers, or surveyors, coverage does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the rendering or the failure to render any professional services by or for you including:
  - (a) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
  - (b) Supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

3. Blanket Additional Insured for Vendors

Unless the **Products-Completed Operations Hazard** is excluded from this policy, **Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2. is amended to include:

- g. Any vendor but only with respect to **Bodily Injury** or **Property Damage** arising out of **your products** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1. The insurance afforded the vendor does not apply to:
    - a. **Bodily Injury** or **Property Damage** for which the vendor is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

If an Additional Insured - Vendors endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

4. Blanket Waiver of Subrogation

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation
- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.
  - b. If required by a written insured contract, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your operations or your work for that person or organization.

5. Broadened Named Insured

**Section II - Liability Coverage, Part I. Who Is An Insured**, Item 4. is replaced with:

4. All of your subsidiaries, companies, corporations, firms, or organizations, as now or hereafter constituted, qualify as Named Insured under this policy if:
- (a) you have the responsibility of placing insurance for each such entity; and
  - (b) coverage for the entity is not otherwise more specifically provided; and
  - (c) the entity is incorporated or organized under the laws of the United States of America.

But each entity is insured only while you own, during the policy period, a controlling interest in such entity of greater than 50% of the stock or assets. However:

- (a) Coverage under this provision is afforded only until the end of the policy period, or the 12 month anniversary of the policy inception date, whichever is earlier;
- (b) Coverage C does not apply to **bodily injury** or **property damage** that occurred

before you acquired or formed the organization;

- (c) Coverage C does not apply to **personal injury** or **advertising injury** arising out of an offense committed before you acquired or formed the organization.

6. Medical Payments

Unless **Coverage D. Medical Payments** is excluded from this policy:

- A. **Section II - Liability Coverage, Part H. Exclusions**, Item 2.f. is replaced with:
  - f. Included within the **products-completed operations hazard**. However, this exclusion does not apply to expenses for dental services.
- B. **Section II - Liability Coverage, Part G. Coverage, Item 2.**, is amended to include:
  - c. **Coverage D. Medical Payments** is primary and not contributing with any other insurance, even if that other insurance is primary also.

7. Tenant's Legal Liability

- A. **Section III - Liability Coverage, Part J. Liability and Medical Payments Limits of Insurance**, Item 3. is replaced with:
  3. The most we will pay under Coverage C - Liability for damages because of **property damage** to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner:
    - a. arising out of any Covered Cause of Loss shall be the greater of:
      - (1) \$1,000,000; or
      - (2) The Tenant's Legal Liability limit shown in the Declarations.

8. Chartered Aircraft

**Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Item 1.g. is amended to include:

- (5) An aircraft in which you have no ownership interest and that you have chartered with crew.

9. Coverage Territory Broadened

**Section III - Definitions**, Item 5.a. is replaced with:

- a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, the Cayman Islands and the British Virgin Islands.

10. Broadened Advertising Injury

Unless **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 2. is replaced with:

2. **Advertising Injury** means injury arising out of one or more of the following offenses:
  - a. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of trademark, copyright, title or slogan.

B. **Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Items 1.p.(1) and (2) are replaced with:

- (1) Arising out of oral, written, televised or videotaped publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written, televised or videotaped publication of material whose first publication took place before the beginning of the policy period;

11. Broadened Personal Injury

Unless **Personal Injury** is excluded from this policy, **Section III - Property, Liability and Medical**

**Payments Definitions**, Items 17.b., d. and e. are replaced with:

- b. Malicious prosecution or abuse of process;
- d. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

12. Broadened Personal or Advertising Injury

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy, **Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.p.(4) Exclusions** is deleted in its entirety.

13. Fellow Employees Coverage

**Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2.a.(1) is amended as follows:

- (1) **Personal Injury** to you or to a co-employee while in the course of his or her employment, or the spouse, child, fetus, embryo, parent, brother, sister or any member of the household of that employee or co-employee as a consequence of such **Personal Injury**, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

14. Mental Anguish Is Included in Bodily Injury

**Section III - Definitions**, Item 4. is replaced with:

4. **Bodily injury** means **bodily injury**, sickness or disease sustained by a person. It includes death or mental anguish which result at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or disease.

15. Unintentional Failure to Disclose Hazards

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Unintentional Failure to Disclose Hazards

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

16. Supplementary Payments, Increase Limits

**Section II - Liability Coverage, Part G. Coverage,** Items 1.e. (2) and (4) are replaced with:

- (2) The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit including substantiated loss of earnings up to \$500 a day because of time off work.

17. Per Location Aggregate

A. **Section II - Liability Coverage, Part J. Limits of Insurance,** Item 4. is amended to include:

The Aggregate Limit of Insurance applies separately to each **location** owned by you, rented to you, or occupied by you with the permission of the owner.

B. **Section III - Property, Liability and Medical Payments Definitions,** is amended to include:

31. **Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of railroad.

18. Amended Duties in the Event of an Occurrence, Offense Claim or Suit

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions,** Items 2.a. and b. are replaced with:

- a. In the event of an **occurrence**, offense, claim, or **suit**, you must promptly notify us. Your duty to promptly notify us is effective when your executive officers, partners, members, or

legal representatives are aware of the General Liability **occurrence**, offense, claim, or **suit**. Knowledge of an **occurrence**, offense, claim, or **suit** by other employee(s) does not imply you also have such knowledge.

- b. To the extent possible, notice to us should include:

- (1) How, when and where the **occurrence** or offense took place;
- (2) The names, addresses, and telephone numbers of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the occurrence, offense, claim, or **suit**.

19. **Common Policy Conditions (AB 00 09 A 01 87), Part H. Other Insurance,** Item 2. is replaced with:

2. Coverage C - Liability

If other valid and collectible insurance is available to **any** insured for a loss we cover under Coverage C of this Coverage Part our obligations are limited as follows:

- a. The insurance provided under this policy is primary if you are required by a written **insured contract** to include any person or organization as an insured, but only with respect to that insured's liability arising out of the ownership, maintenance, or use of that part of the premises owned by or rented to **you**, or **your work** for that insured by or for you. Any other insurance available to that person or organization is excess and noncontributory with this insurance, or;
- b. Except for the circumstance described in 2.a., above, the insurance provided under this policy is excess over any other liability insurance available to any insured whether such other insurance is written as primary, excess, contingent or any other basis. An exception applies when any insured specifically has purchased excess insurance to apply in excess of the limits of insurance shown in the Declarations of this Coverage Part for Coverage C.

20. Damage to Invitees' Automobiles from Falling Trees or Tree Limbs - Limited Coverage

The policy applies to direct physical damage to automobiles owned by invitees subject to all of the following:

1. Provided such damage originates from premises owned, managed, leased or rented by an insured;
2. Coverage applies only to invitees of an insured or an insured's tenant;
3. Such damage is directly caused by wind-driven falling trees or tree limbs;
4. The most we will pay for any one loss is the lesser of the actual cash value of the damaged automobile as of the time of the loss; or the cost of repairing or replacing the damaged automobile with another automobile of like

kind and quality; subject to a limit of \$25,000 in any one policy period; and

5. This coverage is not subject to the General Liability General Aggregate Limit.

21. Expected or Intended Injury - Amendment to Exclusion

SECTION I. - 2. EXCLUSIONS a. Expected or Intended Injury, is replaced by the following:

- a. Expected or Intended Injury

**Bodily injury or property damage** expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

All other terms and conditions of the policy apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## DESIGNATED INSURED


This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective 10/28/13	
Named Insured AGS, Inc.	Countersigned by 

(Authorized Representative)

### SCHEDULE

**Name of Person(s) or Organization(s):**

SCHEDULE NAME OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS CONT: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

APPENDIX D

**DEBARMENT AND SUSPENSION CERTIFICATION**

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named subcontractor:

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


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

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

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

CONTRACTOR: AGS, Inc.

PRINCIPAL: Denis Luy TITLE: Partner

SIGNATURE:  DATE: 5/3/14

END OF APPENDIX D



## APPENDIX "E"

**CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County which have a start date on or after July 1, 2007 should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at [http://www.elationsys.com/elationsys/support\\_1.htm](http://www.elationsys.com/elationsys/support_1.htm) or call Elation Systems at (510) 764-1870. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

## PRE-CONTRACTING DATA FORM

**INSTRUCTIONS**

This Pre-Contracting Data Form is to be completed by department/agency staff **BEFORE** a worker is hired as an independent contractor. The following information is necessary to help determine the type of work to be performed. Be sure to answer **ALL** of the questions and forward to the Human Resource Services Department for approval.

**REMINDER: No work under any contract may begin until ALL approvals have been received.**

**I. INFORMATION ABOUT CONTRACTOR**

Name of Proposed Contractor: Dennis Wong, PE

Name of Company: AGS, Inc.

Type of Business: CIVIL ENGINEERING CONSULTANT

Address: 1814 Franklin Street #315 Phone: (510) 251-1180

Oakland, CA 94612

Sole Proprietor                       Partnership                       Limited Liability Company (LLC)

Social Security Number: \_\_\_\_\_ Federal Tax ID: 06-0010385

Description of Service: Civil Engineering Services for updating Operations and Maintenance Manuals for U.S. Army Corps of Engineers constructed flood control projects in Alameda County, in Flood Control Zones 2, 5 and 12

Proposed Term of Contract: Beginning Date: June 10, 2014 Ending Date: May 31, 2016

Proposed Pay Rate: Hourly: N/A Bi-Weekly: N/A Monthly: N/A Flat Rate: N/A

Reason for contract (special projects, season, etc): Specialized knowledge and personnel required for the updating of the U.S. Army Corps of Engineers' Operation and Maintenance Manuals

Detailed written description of the duties for the proposed contractor:

Assist District staff in updating the O&M Manuals, including consultation with the USACE staff to discuss goals and concerns; review existing O&M manuals; collect relevant information (such as maintenance records, current maintenance practices, as-built plans for repairs and improvements to the original constructed channel, surveys, hydrologic and hydraulics studies, geotechnical and geological studies, environmental studies and previous USACE inspection reports) to be incorporated in the new O&M manuals; conduct field reconnaissance to confirm existence of improvements and identify existing conditions that may need to be incorporated; conduct videotaping/inspection of the conditions inside conduits that penetrate levees to assess their conditions; identify and document areas of special concern (such as endangered species or habitat, significant utility crossings or facilities, non-complaint vegetation, right-of-way issues, emergency access limitations, non-District facilities); prepare project-specific Emergency Action Plans which will cover preparation for and responses to project emergency conditions that could occur due to flood related failures; and prepare 30%, 60%, 90% and final version of the updated O&M manuals to be reviewed by the District and USACE.

**NOTE: PLEASE ATTACH A COPY OF THE ALCOLINK REQUISITION**

**INDEPENDENT CONTRACTOR PRE-HIRE WORKSHEET**

**INSTRUCTIONS**

This Pre-Hire Worksheet is to be completed by department/agency staff **BEFORE** a worker is hired as an independent contractor. The following checklist is necessary to help determine whether an employer/employee relationship exists. Be sure to answer **ALL** of the questions and forward to the Human Resource Services Department for approval.

An employer/employee relationship may be deemed to exist if the answers to the following questions yield “Yes” responses.

**REMINDER: No work under any contract may begin until ALL approvals have been received.**

**I. INFORMATION ABOUT CONTRACTOR**

Name: Dennis Wong, PE

Name of Company: AGS, Inc.

Type of Business: CIVIL ENGINEERING CONSULTANT

Address: 1814 Franklin Street #315, Oakland, CA 94612 Phone: (510) 251-1180

Sole Proprietor                       Partnership                       Limited Liability Company

Social Security Number: \_\_\_\_\_ Federal Tax ID: 68-0010385

Individual has not previously contracted with the County

Individual has previously contracted with the County

Service provided \_\_\_\_\_

Individual is currently a contractor with the County

Service provided \_\_\_\_\_

Is this contract being sought to fill a temporary vacancy created by an employee who is out on Worker’s Compensation, Americans with Disabilities Act or Family Medical Leave Act leave?  
NO.

If yes, complete only Section I and contact the Human Resource Services Department (HRSD) to finalize this contract.

**II. MULTIPLE RELATIONSHIPS WITH THE COUNTY**

1. Is this individual on record as a current employee? (Current employees may not contract with the County)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Is this individual on record as a retired Alameda County employee? If no, is it expected that the county will hire this individual as an employee following the termination of this service contract?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Was the individual an Alameda County employee or a temporary employee any time during the last year and did he or she provide the same or similar services while an employee?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**III. RELATIONSHIP OF PARTIES**

**Intent:** Intent of parties concerning status and control of contractor; expected relationship between County and contractor.

1. Is the relationship between the county and the contractor intended to be longer than one year?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Is the work to be performed part of the regular business of the County?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Is the contractor doing work that would otherwise be done by a County employee? (i.e., are there County positions with the same or similar duties?)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Will the contractor receive any benefits that are normally paid to employees?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**Integration:** Significant melding of contractor and staff roles.

1. Does the contractor provide services that are integrated into the business of County departments? (i.e., does the success of continuation of the County's business depend significantly on the performance of certain services that this contractor will provide?)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Will this contractor be assigned a specific office or workplace?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Will this contractor be assigned to a personal telephone number?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Will the County provide employees as assistant workers?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. Will the contractor have County business cards?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**Control:** Measure of Independence

1. Will County staff train this contractor?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Will the County require this contractor to attend County meetings, to comply with instructions, and to work substantially full-time?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Will the County require this contractor to work set hours?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Will this contractor use County tools and materials?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. Will this contractor be precluded from realizing a profit or loss?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6. Will the County pay the contractor by the hour, week, or month?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**IV. DETERMINATION**

If you have answered YES to any of these questions, then you MAY NOT hire this individual as an independent contractor. Please contact your Human Resources Analyst to explore other options.

A copy of this worksheet *must* be submitted to the Human Resource Services Department for authorization before preparing a Standard Services Agreement.

Agency/Department: ALAMEDA COUNTY PUBLIC WORKS AGENCY, ENGINEERING, FLOOD CONTROL

Agency/Department Contact Person: MOSES TSANG

Phone: 510-670-6549

DF  
HRS Department Authorization

5/21/14  
Date

**Professional Services Agreement**

**With**

**AGS, Inc.**

**for the**

**Updating of Operations and Maintenance Manuals for U.S. Army Corps of  
Engineers Constructed Flood Control Projects in Alameda County**

**Flood Control Zones 2, 5 and 12**

**Contract No. 10273**

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

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

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**AGREEMENT BETWEEN THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AND  
AGS, Inc.**

This Agreement is made this 10<sup>th</sup> day of June, 2014, in the City of Oakland, State of California, by and between AGS, Inc., 1814 Franklin Street, #315, Oakland, CA 94612, hereinafter referred to as “Consultant” and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as “District.”

**AGREEMENT**

**1. Definitions**

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

<b>Agreement</b>	This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A”, “B”, “C”, “D”, and “E” attached hereto.
<b>Consultant</b>	AGS, Inc.
<b>District</b>	Alameda County Flood Control and Water Conservation District
<b>Project</b>	The District’s project – Civil Engineering Services for updating of Operations and Maintenance Manuals for U.S. Army Corps of Engineers Constructed Flood Control Projects in Alameda County, Flood Control Zones 2, 5 and 12 - as further described in Appendix “A”, Scope of Services.
<b>Services</b>	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
<b>Subconsultants</b>	Consultant’s consultants, subconsultants, contractors and subcontractors, of any tier.

**2. Term of Agreement**

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from June 10, 2014 through May 31, 2016.

**3. Services Consultant Agrees to Perform**

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

contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation.

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

#### **4. Compensation**

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

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

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



supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

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

## **6. Qualified Personnel**

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Consultant through Kenneth J. Litle, AGS, Inc., 1814 Franklin Street #315, Oakland, CA 94612; and Consultant shall direct all communications to District through District Project Engineer.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

## **7. Representations**

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

## 8. Indemnification and General Liability

- 8.1(a) To the fullest extent allowed by law, Consultant shall indemnify and hold harmless the District and County of Alameda, their Board of Supervisors, officers, employees, and representatives from and against any and all claims, actions, including administrative actions, penalties, fees or fines, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, District or County employees, and the public, or damage to property, or any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District or County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement to the extent caused by the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.
- (b) The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2782.8 of the California Civil Code.
- (c) The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceeding for professional negligence would be barred by an applicable statute of repose or statute of limitation.
- 8.2 [Intentionally Omitted]
- 8.3 [Intentionally Omitted]
- 8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix "A", Services To Be Provided By Consultant.

## 9. Liability of District

- 9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix "C", Insurance, District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such

damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of District.

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

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

10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.

10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.

10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.

10.4 Consultant shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

#### **11. Insurance**

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

#### **12. Suspension of Services**

12.1 District may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

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

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

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

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

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

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

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

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

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

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

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

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

#### 14. Termination of Agreement for Convenience

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

- 14.4 Subject to provisions of Section 14.3, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

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

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

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

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

**17. Notice to the Parties**

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

- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
  - (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
- 17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- 17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.
- To District:
- Moses Tsang, PE  
Supervising Civil Engineer  
Alameda County Flood Control and Water Conservation District  
399 Elmhurst Street, Room 201  
Hayward, CA 94544
- To Consultant:
- Dennis Wong, PE  
Principal  
AGS, Inc.  
1814 Franklin Street #315  
Oakland, CA 94612
- 17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

## 18. Ownership of Results/Work for Hire

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



**19. Audit and Inspection Records**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25.1 Consultant shall subcontract with *WRECO (1814 Franklin Street #608, Oakland, CA 94612; Principal, Han-Bin Liang)*, for services to be provided under this Agreement in an amount totaling of at least twenty percent (20%) of the contract value of this Agreement in accordance with COUNTY's Small and Emerging Locally owned Business provision.
- 25.2 Participation of a small and/or emerging local business must be maintained for the term of this contract. Consultant shall not substitute the small and/or emerging local business(s) listed in this Agreement without prior written approval from the COUNTY. COUNTY will be under no obligation to pay Consultant for the percent committed to a small and/or local business if the work is not performed or not performed by the listed small and/or emerging local business. Said requests to substitute a small and/or emerging local business shall be submitted in writing to the County Purchasing Department, ATTN: Purchasing Manager, 1401 Lakeside Drive, 9<sup>th</sup> Floor, Oakland, CA 94612.
- 25.3 Consultant shall provide SLEB utilization reports when invoicing the DISTRICT utilizing the Alameda County Compliance System. Consultant and Consultant's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the COUNTY web-based compliance system as described in Appendix E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Consultants to the certified small and/or emerging local businesses. It is the Consultant's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System.

**26. First Source Program**

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

**27. Disputes**

- 27.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District Engineer or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party, and a meeting between the District representative and principal of the Consultant shall then take place within five days of the request.
- 27.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow

Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

- 27.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

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

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

- 28.2 The parties shall execute one original and three copies of this Agreement.

## **29. Compliance with Laws**

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

## **30. Construction**

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

## **31. Miscellaneous**

- 31.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.
- 31.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

- 31.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 31.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 31.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

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

- 32.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 32.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 32.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 32.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 32.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 32.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

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

- 33.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the District, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.

- 33.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 33.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 33.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 33.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 33.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 33.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 33.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.
- 33.12 In accordance with Section 1776 of the Labor Code:

- 33.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
- 33.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
- 33.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- 33.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
- 33.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
- 33.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 33.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 33.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 33.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 33.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 33.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
- 33.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.
- 33.13.2 This provision applies to all classifications, including truckers.

- 33.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with District representatives may result in conditioning amounts of any progress payment due.
- 33.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 33.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 33.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 33.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 33.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
- 33.16.7 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM: The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 33.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 33.17.1 If District finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the District will notify the Consultant in writing of the sanctions to be imposed.
- 33.17.2 In addition, the District shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein.
- 33.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:



- 33.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 33.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 33.18.3 Terminate the contract and collect appropriate damages from the Consultant.
- 33.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future District contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

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

“District”

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

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

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

“Consultant”

AGS, Inc.

By: \_\_\_\_\_  
Dennis Wong, PE  
Principal

Date: 5/23/07

Approved as to form:  
Donna B. Ziegler, County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

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

END OF DOCUMENT

## APPENDIX A

**SERVICES TO BE PROVIDED BY CONSULTANT**

1. This is an appendix attached to, and made a part of the Agreement dated June 10, 2014, between the Alameda County Flood Control and Water Conservation District (“District”) and AGS, Inc. (“Consultant”), providing for professional services.

1.1 The District’s Proposed Project – Civil Engineering Services for updating Operations and Maintenance Manuals for U.S. Army Corps of Engineers constructed flood control projects in Alameda County, Flood Control Zones 2, 5 and 12

1.2 Consultant Team

Consultant’s team consists of

AGS, Inc. (Prime)  
Kenneth Litle, PE, PLS, LEED AP  
Dennis Wong, PE, LEED AP BD+C  
Bahram Khamenehpor, Ph.D., PE, GE  
Erik Alderson, PE  
Kristen Hanson, PE  
David Dorcich, PE  
Jeff Yip, PE  
1814 Franklin Street #315  
Oakland, CA 94612

WRECO (Small – SLEB)  
Han-Bin Liang, Ph.D., PE  
Grant Wilcox, PE, PG, CEG  
Chris Sewell, PE  
1814 Franklin Street #608  
Oakland, CA 94612

Consultant shall provide civil engineering services, and is the prime consultant, with the other consultants serving as subconsultants.

1.3 Scope of Project

Refer to Appendix A-Exhibit A-1 attached hereto.

#### 1.4 Consultant's Milestone Schedule and Deliverables

The Milestone Schedule shall be in accordance with Appendix A-Exhibit A-1 attached hereto. The deliverables shall be as specified in Appendix A-Exhibit A-1 attached hereto.

#### 1.5 Personnel and Subconsultants

Consultant shall use only the personnel and subconsultants identified herein.

### 2. General Requirements

#### 2.1 General Criteria Governing Consultant's Service

2.1.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the District grants a written exemption to a specific standard or regulation.

2.1.2 Consultant shall review existing District data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the District concerning existing conditions (including, but not limited to, existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall rely on the results of its own independent investigations and not on information provided by District. Consultant shall review supplied design information and advise District of its adequacy for Consultant's work and advise District of any further design or other services necessary to complete the Project.

2.1.3 Unless otherwise permitted in writing by District, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such evaluation in making its decision.

#### 2.2 General Scope of Consultant's Services

2.2.1 Consultant's services shall include all professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. These services will include, but are not limited to, the services outlined in Consultant's proposed scope of services annexed to this Appendix as its Exhibit A-1. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services.

2.2.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with District staff, with other governmental agencies, and with

such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other consultants).

- 2.2.3 Consultant shall engage all appropriate specialty subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the consultants as specified in Exhibit A-1, at the sole expense of Consultant. Consultant's contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant's scope of work. Consultant shall secure District's approval for any subconsultants not listed in Exhibits A-1 and this Appendix. Consultant shall require each of its subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold District harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.4 Consultant shall provide District with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation and its incorporation into the Project, including but not limited to, all requirements imposed by the Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including, but not limited to, Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

### 2.3 Coordination of Services with the Project, District's Consultant Team, and District Staff

- 2.3.1 Consultant shall fully coordinate its Services with the services of all engineering disciplines and subconsultants involved in completing the Project. For projects requiring the development of construction designs, the objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for balance of the Project, with consistency in engineering standards, any construction methods anticipated, construction details, materials specifications and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise District in writing if any District staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance. District will have responsibility to then enforce compliance.
- 2.3.2 Consultant shall provide appropriate safety training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate safety procedures for work in the Project area. Consultant shall require all personnel under Consultant's direction to wear safety equipment such as orange vests and appropriate shoes, ear, and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

### 2.4 Deliverables and Completion Dates Required Under this Agreement

Required deliverables are discussed in Section 4 below, and in Consultant's proposed scope of work annexed as Exhibit A-1. Each deliverable shall be reviewed with representatives of the District. The District shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that District reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to District, and the cost thereof is included in the fee for Basic Services. (If Consultant should disagree with District's determination, Consultant shall make the changes requested by District under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge.)

### 2.5 Monthly Progress Update

With each request for payment, Consultant shall provide District with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, Item 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, District, or any third party) of which Consultant becomes aware.

### 3. Additional Services

All Services identified in the Agreement, including, but not limited to, the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are "Basic Services". The District may request Consultant to provide services in addition to Basic Services, referred to hereafter as "Additional Services". Additional Services must be authorized by District in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities. (Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's errors, omissions, or conflicts of any type in Consultant's work product. All such services shall be performed at no cost to District, including, but not limited to, any required corrections or revisions to reports, drawings, or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services).

END OF APPENDIX A

## Exhibit A-1 Scope of Work

May 21, 2014

The scope of work for the three (3) USACE constructed projects (Alameda Creek, San Leandro Creek, and San Lorenzo Creek) has identical tasks but requires different levels of effort to complete. The required level of effort for each Project will be identified in the contract budget spreadsheet by Project, by Task, as shown in Exhibit B-1 to Appendix B.

### **Task 1: Project Coordination, Project Administration and Meetings**

- 1.1 AGS will meet and coordinate with the District and USACE staff to discuss goals, objectives, and concerns, and refine scope of work as necessary.
- 1.2 AGS will coordinate with technical staff, administrative staff and sub-consultants.
- 1.3 Meet with the District and USACE to discuss problem issues such as USACE Engineering Regulations which the District may feel are cost prohibitive, or in conflict with other federal regulations. AGS will work to reach consensus on problem issues.
- 1.4 It is anticipated that two (2) half-day meetings at District or USACE Office for each interim 30%, 60% and Final (pre-signatures) review submissions would be sufficient. AGS will prepare and distribute meeting minutes for each submission review meeting.

### **Task 2: Review of Available Data and Site Visits**

- 2.1 AGS will review current version of the O&M manual and collect relevant information to be incorporated in the new Operations and Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) manual.
- 2.2 AGS will coordinate, discuss with District M&O staff, gather and review all available maintenance records and identify current maintenance practices, which AGS will incorporate in the updated manual. It is anticipated that two (2) half-day meetings at District Office at 951 Turner Court would be sufficient.
- 2.3 Coordinate with the District staff, USACE staff, and outside agency staff as appropriate to gather and review of all existing and available documents including all constructed improvements and previous USACE inspection reports to be included and/or referenced in O&M manual update – including as-built plans, surveys and cross sections, hydrologic and hydraulic studies, geotechnical and geological studies, environmental studies/reports related to constructed improvements (by USACE, District, ACWD, EBRPD, BART, UPRR and other development connected to Alameda Creek), and other documents necessary for O&M manual updates.
- 2.4 Conduct field reconnaissance to confirm existence of improvements and identify existing conditions that may need to be incorporated into updates to O&M manual. AGS will attend site visits with the District and/or USACE staff at the start of the project. It is anticipated that half (1/2) day of site visit with District and/or USACE staff during project startup, and one (1) day of additional field work detailing and documenting observations will be sufficient.
- 2.5 Identify and document areas of special concern or unique conditions such as areas of endangered species or habitat, significant utility crossings or facilities, non-compliant vegetation, right-of-way issues, emergency access limitations, ACWD facilities such as

rubber dams and pump stations, EBRPD recreational facilities, BART and UPRR crossings, BART weir, Dry Creek Tributary, etc.

### **Task 3: Preparation of OMRR&R Manual**

Develop a dynamic “living” OMRR&R manual with simplicity and ease of use as key features. AGS will gather, review, compile all the pertinent project information described below, and prepare, and provide a complete updated OMRR&R Manual that is acceptable to the District and USACE:

The OMRR&R manual shall include the following key sections (by contract sub-Tasks):

#### **3.1 Preface**

The Preface will include Acknowledgements, Layout of the Manual, Table of Contents, and List of Figures and Appendices.

#### **3.2 Overview**

The overview will facilitate the use of the OMRR&R manual. It will briefly discuss the purpose, content, and layout of the manual. Graphics (flow charts, sketches, etc.) will be considered to add clarity.

#### **3.3 General**

A general description of the project will be provided. It will include descriptions of the authorized project purpose, significant features, and project functions. A plan of the project which depicts the project limits and significant features will be provided. A layman should be able to understand the project and feel comfortable reviewing the field conditions when using the information provided.

#### **3.4 Authorization**

The original authorizing legislation and any subsequent legislation will be cited. A summary of each citation will be included.

#### **3.5 Location and Access**

The physical setting of the project will be described in detail. The project’s relationship to political boundaries (state, county, city, and town) will be depicted. Travel instructions to the project will be included. Also, local access within and around the project limits will be discussed, including local street names. A plan will help present the information.

#### **3.6 Pertinent Information**

Significant milestones in the project’s planning and design history will be outlined in chronological order. A brief discussion of the project’s natural setting (land use, geology, soils, climate, habitat and wildlife, weather, and hydrologic data including norms and extremes, permit history, and regulatory agency mitigation requirements) will also be provided. The habitat and wildlife portion will provide a detailed discussion of the life cycle, habits, and activities of ground squirrels, and their impacts on levee maintenance. Milestones and natural setting issues that might impact OMRR&R and project purposes will be highlighted.



### 3.7 Construction History

A chronological summary of the project's construction history will be provided including all major modifications to the project. The summary will include contracts (start and completion dates and costs), features constructed, problems encountered during construction, names of contractors, contracting officers, and resident engineers. The as-built plans and specifications will be referenced and included in the appendices.

### 3.8 Project Performance

Both expected performance based on the design documents and the actual performance during significant events will be discussed. The expected performance discussion will include: the level of protection provided by various reaches of project; the consequences of flow or other conditions exceeding the project design; and the mitigation and/or benefits of all other project functions such as cultural resources, environment, and recreation. The actual performance discussion will provide a summary of the water level, reoccurrence interval, water velocity, and issues encountered for each significant event.

### 3.9 Project Cooperation Agreement

State: The (signatory) and (signatory) (provide official nomenclature) have entered into a PCA for this project on (date) as required by Public Law (99-662). A brief summary of the agreement will be provided. A copy of the duly executed PCA will be included in one of the appendices.

### 3.10 Normal Operation and Maintenance

The project operations necessary to maintain a safe and efficient functioning project that produces the benefits set forth in the project authorization will be outlined in detail. Answers to who, what, where, when, and how for each project operation and maintenance procedure will be provided. In addition conditions that trigger maintenance activities will also be provided. USACE and District will work with AGS in developing the triggers. Each project will be divided into reaches and required operation and maintenance procedures will be listed for each reach. Additional District operation and maintenance requirements required due to Routine Inspections will be provided by District and will be included. Copies of the required operation and maintenance procedures and forms to be used will be provided in the appendices.

### 3.11 Emergency Operation/Emergency Action Plan

The District may have a Universal Emergency Action Plan that covers all their projects. A project specific Emergency Action Plan will be developed for the OMRR&R Manual and will be included in the appendices. It will cover preparations for and responses to project emergency conditions that could occur due to each possible mode of failure. Additional Emergency Action Plan requirements required due to District Routine Inspections will be provided by District and should be included. Copies of emergency operation procedures and forms to be used will be provided in the appendices.

The plan will cover, but not be limited to:

- (1) Chain of responsibility.
- (2) Emergency communications network including redundancies (internal and external).
- (3) Local emergency response assistance such as fire, police, medical, and Red Cross.
- (4) State and Federal emergency response agencies.

- (5) Flood fight or other plans that may have been part of design documentation.
- (6) Temporary plans to handle possible emergencies due to “U” rated items identified in the latest Routine Inspection Report.
- (7) Required frequency to exercise plan and type(s) of exercises required.

### 3.12 Inspection and Reports

District and USACE both perform inspections of the projects. USACE performs Routine Inspections (one per year) and Periodic Inspections (dependent on consequences) on the projects. In addition, USACE has performed a Levee Screening Assessment (one time analysis) of Alameda Creek. USACE inspection procedures and related requirements will be briefly discussed and will be referenced in the main body of the manuals, and complete copies of the procedures and related requirements should be referenced and included in the appendices. The location of hard and electronic copies of the USACE inspection reports will also be referenced in the main body of the manuals.

District executes inspections to ensure the proper care and efficient operation of each project feature. The inspection requirements will be discussed briefly and referenced in the main body of the manuals and complete copies of the inspection requirements will be included in the appendices. The location of hard and electronic copies of the District inspection records and reports will also be referenced in the main body of the manuals. If additional inspection procedures are needed, they will be developed by AGS and meet the basic guidance contained in the Levee Owner’s Manual. Adaptations needed to satisfy conditions not covered in the Levee Owner’s Manual will be provided. The contents of the District inspection plan requirements will be divided by project as follows:

1. Levees
  - a. Crown/Access Road
  - b. Slopes
  - c. Interior Drainage Structures
    - i. Flap/Slide Gates
    - ii. Pipes
    - iii. Concrete
2. Natural Creek Channels
  - a. Banks
  - b. Bed
  - c. Outfalls (Cities/Others)
3. Overflow Bypass Channels
  - a. Bed
  - b. Crossover
  - c. Ponds

### 3.13 Surveillance

A surveillance program will be outlined that requires appropriate measurements, observations, and other activities be performed to ensure project benefits are being obtained. An outline of surveillance records to be maintained and made available at the time of inspection will be referenced and copies should be provided in the appendices. This program will cover, but is not limited to:

- (1) Routine stage and discharge records to show continued satisfactory performance or provide timely notice that attention is required.

- (2) Hydrographic and land surveys as required to indicate when periodic dredging, correction of bank erosion, and correction of levee settlement need to be performed.
- (3) Special surveillance as may be covered in the project design documents.

### 3.14 Repair, Replacement, and Rehabilitation

This section will include: "Repair is considered to entail those activities of a routine nature that maintain the project in a well-kept condition. Replacement covers those activities taken when a worn-out element or portion thereof is replaced. Rehabilitation refers to a set of activities as necessary to bring a deteriorated project back to its original condition. RR&R actions are to conform to the project as-built plans and specifications unless other arrangements are made with the USACE. These activities are the responsibility of the project sponsor." RR&R activities not covered in previous sections that may require unusual treatment should also be discussed in this section.

### 3.15 Notification of Distress

The applicable requirements in ER 1110-2-101 will be included so that the USACE has evidence that appropriate actions are being and will be taken.

### 3.16 Version Control

To properly track changes and regular updates, the manual shall also include a tracking log summary, which may be used to expedite preparation of periodic reports and other regulatory requirements.

### Glossary

The OMRR&R manual shall also include an appendix section consisting of the following items (preliminary):

- As-Built Plans (gathered, organized, and referenced as part of Task 3.5)
- Project Cooperation Agreement (gathered, organized, prepared and referenced as part of Task 3.8)
- Emergency Action Plan (prepared and referenced as part of Task 3.10)
- Hydraulics and Hydrology Reports (gathered, organized, and referenced as part of Task 3.5)
- Vegetation Management (prepared and referenced as part of Task 3.9)
- Designated Land Uses (prepared and referenced as part of Task 3.5)
- Previous available Corps inspection reports (gathered, organized, prepared and referenced as part of Task 3.11)
- Other latest reports, etc. (gathered, organized, and referenced as part of Task 3.5)
- USACE Inspection Checklists
- USACE Inspection Report & Rating Guides
- USACE Semi-Annual Report Forms
- Details for Flood Fighting Methods
- Rehabilitation Request Forms

The OMRR&R manual shall feature an index section for cross-referencing and locating specific information in the manual.

The order of the manual sections may be reconfigured for more efficient use, similar to the manuals that AGS prepared for the Santa Clara Valley Water District.

We assume that the District will provide specific exhibits, figures, reports and pertinent calculations, where applicable and available, such as:

- Locations Maps
- Haul Routes
- Creek Cross-sections
- Project Boundaries
- Emergency Access Maps & Contact List
- Specific Vegetation Management Exhibits
- Special Management Areas
- Project Maintenance Activity maps
- Managed Habitat Site Maps
- Outstanding Mitigation Requirements
- Sedimentation Monitoring Site Exhibits
- Adjacent Parcel Numbers and Ownership
- Hydrology & Hydraulics Exhibits, Profiles and Calculations
- Geotechnical Information and Reports
- Previous Inspection Reports
- Storm Drain Outfall Maps
- Encroachment and Utility Maps
- As-Built Drawings and Construction History
- Project Cooperation Agreements
- General Information

**Task 4: Videography**

Provide condition assessment with equipment capable of recording high resolution video footage and capturing digital images of problem area(s), in addition to written report documentation a minimum of 100' of all underground storm drain outfalls into the creeks. The firm performing the high resolution video recording must be specialized and have experience in performing this type of work. The video footage should have reference to beginning point, be able to measure/tracked distance traveled in the pipe, and correlate the video and/or photo image used in the written assessment report.

The written report shall have a description of the underground pipe location in relation to the main channel, a brief discussion of assessments including reference to high resolution video footage and photos taken for problem area(s), date and time the assessment is being conducted. A pre-final draft report along with the video and photos shall be provided to the District for review and comments/acceptance, prior to final for signature.

A DVD containing the high resolution video and digital photos, the final signed report in pdf and in Word shall be provide to the District, along with two (2) hard copies of the final report.

**Task 5: GIS Coordination**

Coordinate to provide the District with any data gathered for the O&M manuals in order to incorporate information into District's GIS database.

**Assumptions**

Available manuals, reports, studies, calculations, drawings, photographs, and miscellaneous documents necessary for the preparation of the OMRR&R manual will be uploaded into a file share (FTP) site available to AGS staff after date of consultant contract award.

**Deliverables**

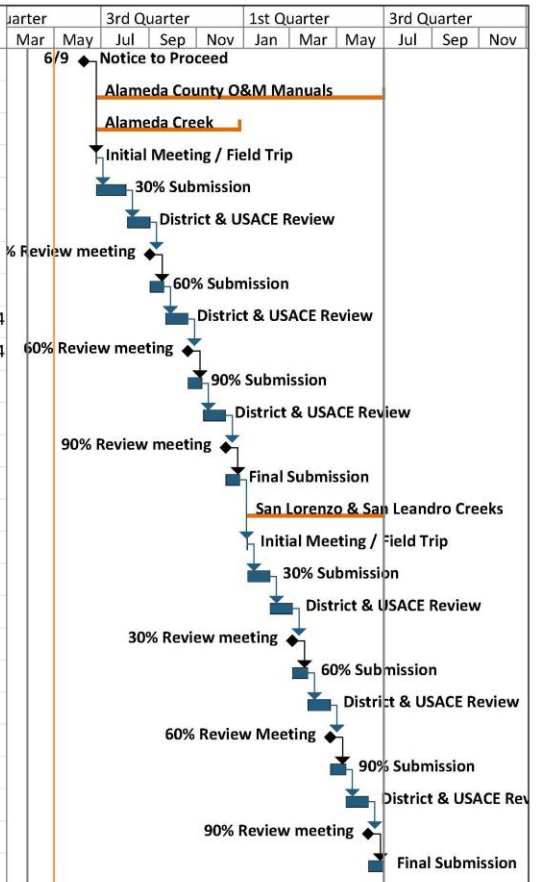
Submissions:

- 30% Completion - Main Text including Emergency Action Plan  
District - electronic copy (both pdf and MS Word), 4 hard copies
- 60% Completion - Main Text including Emergency Action Plan  
District - electronic copy (both pdf and MS Word), 4 hard copies
- 90% Completion - Entire Manual and referenced Appendices  
District - electronic copy (both pdf and MS Word), 4 hard copies
- 100% Completion - Entire Manual and referenced Appendices  
District - electronic copy (both pdf and MS Word), 4 hard copies

**Anticipated Schedule**

The anticipated MS Schedule will be updated periodically, as necessary, to reflect milestones and key delivery dates, based on on-going discussions with District staff. The following is the anticipated schedule with durations in working days:

ID	Task Name	Duration	Start	Finish	2nd Quarter				3rd Quarter				1st Quarter			3rd Quarter		
					Mar	May	Jul	Sep	Nov	Jan	Mar	May	Jul	Sep	Nov			
1	Notice to Proceed	0 days	Mon 6/9/14	Mon 6/9/14		6/9												
2	<b>Alameda County O&amp;M Manuals</b>	<b>266 days</b>	<b>Tue 6/24/14</b>	<b>Tue 6/30/15</b>														
3	<b>Alameda Creek</b>	<b>134 days</b>	<b>Tue 6/24/14</b>	<b>Fri 12/26/14</b>														
4	Initial Meeting / Field Trip	1 day	Tue 6/24/14	Tue 6/24/14														
5	30% Submission	28 days	Wed 6/25/14	Fri 8/1/14														
6	District & USACE Review	21 days	Mon 8/4/14	Mon 9/1/14														
7	30% Review meeting	0 days	Mon 9/1/14	Mon 9/1/14														
8	60% Submission	14 days	Tue 9/2/14	Fri 9/19/14														
9	District & USACE Review	21 days	Mon 9/22/14	Mon 10/20/14														
10	60% Review meeting	0 days	Mon 10/20/14	Mon 10/20/14														
11	90% Submission	14 days	Tue 10/21/14	Fri 11/7/14														
12	District & USACE Review	21 days	Mon 11/10/14	Mon 12/8/14														
13	90% Review meeting	0 days	Mon 12/8/14	Mon 12/8/14														
14	Final Submission	14 days	Tue 12/9/14	Fri 12/26/14														
15	<b>San Lorenzo &amp; San Leandro Creeks</b>	<b>127 days</b>	<b>Mon 1/5/15</b>	<b>Tue 6/30/15</b>														
16	Initial Meeting / Field Trip	1 day	Mon 1/5/15	Mon 1/5/15														
17	30% Submission	21 days	Tue 1/6/15	Tue 2/3/15														
18	District & USACE Review	21 days	Wed 2/4/15	Wed 3/4/15														
19	30% Review meeting	0 days	Wed 3/4/15	Wed 3/4/15														
20	60% Submission	14 days	Thu 3/5/15	Tue 3/24/15														
21	District & USACE Review	21 days	Wed 3/25/15	Wed 4/22/15														
22	60% Review Meeting	0 days	Wed 4/22/15	Wed 4/22/15														
23	90% Submission	14 days	Thu 4/23/15	Tue 5/12/15														
24	District & USACE Review	21 days	Wed 5/13/15	Wed 6/10/15														
25	90% Review meeting	0 days	Wed 6/10/15	Wed 6/10/15														
26	Final Submission	14 days	Thu 6/11/15	Tue 6/30/15														





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**EXHIBIT A-1  
FEE SCHEDULE**  
[Effective 1/1/2014]

<b><u>PROFESSIONAL AND SUPPORT SERVICES</u></b>	<b><u>2014 HOURLY RATE</u></b>
Senior Principal A/E <sup>1</sup>	\$200
Principal A/E	\$175
Senior A/E	\$150
Project A/E	\$130
Senior Staff A/E	\$115
Staff A/E	\$105
CAD Drafter <sup>3</sup>	\$ 95
Senior Field Technician <sup>2,3</sup>	\$ 90
Field Technician <sup>2,3</sup>	\$ 80
Project Administrator <sup>3</sup>	\$ 70
Clerical Administrator <sup>3</sup>	\$ 60

<sup>1</sup> Architects, Engineers, Scientists, Geologists

<sup>2</sup> Field technician services require a minimum of 4 consecutive hours per day followed by 2-hour increments. We require 24 hours advance notice for scheduling. Two hours will be charged for any cancellation within 24 hours.

<sup>3</sup> Overtime rates for work in excess of 8 hours per day or 40 hours per week are 1.5 times the regular hourly rates for weekdays and Saturday and 2.0 times the regular hourly rates for Sunday and holidays. Overtime for professional services is billed at the regular hourly rate.

**OTHER DIRECT COSTS [ODC]**

Reimbursable for other direct costs are billed at cost plus 12 percent. These reimbursable costs include, but are not limited to:

1. Consultant and Subcontracted Services
2. Travel: Airfare, Auto Rental, Parking, Toll
3. Subsistence: Lodging, Meals and Incidentals
4. Auto Mileage: \$0.56 per mile
5. Field Vehicles: \$65 per day
6. Nuclear Gauge: \$10 per hour
7. Other Direct Expenses: Field Expenses, Equipment Rental, Special Fees, Permits, Printing, Reproduction, Express Mail, Delivery, etc.
8. Rates for health/safety and field instrumentation equipment rental will be furnished upon request.

The Fee Schedule is subject to revision periodically or at the end of each calendar year. See Appendix B of Contract Agreement for rate adjustment conditions and limitation.

## APPENDIX B

**PAYMENTS TO CONSULTANT**

This is an appendix attached to, and made a part of the Agreement dated June 10, 2014, between the Alameda County Flood Control and Water Conservation District (“District”) and AGS, Inc. (“Consultant”), providing for professional services.

**1. Amount of Compensation for Services of Consultant**

- 1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed Five Hundred Four Thousand Eight Hundred and Ten Dollars (\$504,810) referred to hereafter as the Not To Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- 1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by District.

**2. Monthly Billing Breakdown**

- 2.1 District shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for District’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.

**3. Methods of Payment to Consultant**

- 3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.
- 3.2 For Additional Services. The District shall pay Consultant for Additional Services, as defined below, as follows:
  - 3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at District’s option, based on hourly rates per Consultant’s billing schedule with an agreed Not-to-Exceed amount.



3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefor.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the District.

#### 4. Definitions

4.1 “Additional Services” mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.

4.2 The Billing Rates used as a basis for payment apply to all of Consultant’s and Subconsultants’ principals, professional personnel and others engaged directly on the Project, and are set forth in the Scope of Project (Exhibit A-1 attached to Appendix A). Any future adjustments to the 2014 fee schedule is subject to negotiation for approval by the District. In any case, the maximum adjustment shall not exceed 3%.

END OF APPENDIX B



Task	Task Description	HOURS					LABOR				ODCs	ODCs MARKUP	SUB MARKUP	TOTAL
		AGS					AGS	WRECO (SLEB)	Subtotal Subs	Total Labor				
		Principal A/E	Project A/E	Senior Staff A/E	CAD / Eng Tech	Project Administrator								
	Hourly Billing Rate	\$175.00	\$130.00	\$115.00	\$95.00	\$70.00						10%	5%	
<b>1</b>	<b>Alameda Creek</b>													
<b>1.1</b>	<b>Project Coordination, Administration and Meetings</b>													
1.1.1	Project Initiation	4	4				\$ 1,220	\$ 400	\$ 400	\$ 1,620	\$ 100	\$ 10	\$ 20	\$ 1,750
1.1.2	Project Coordination and Management	40	60				\$ 14,800	\$ 1,400	\$ 1,400	\$ 16,200	\$ 500	\$ 50	\$ 70	\$ 16,820
1.1.3	USACE Levee Safety Program Meetings	4	4				\$ 1,220	\$ 400	\$ 400	\$ 1,620	\$ 100	\$ 10	\$ 20	\$ 1,750
1.1.4	Submittal Review Meetings	12	12				\$ 3,660	\$ 800	\$ 800	\$ 4,460	\$ 300	\$ 30	\$ 40	\$ 4,830
	<b>Subtotal (Task 1.1)</b>	<b>60</b>	<b>80</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 20,900</b>	<b>\$ 3,000</b>	<b>\$ 3,000</b>	<b>\$ 23,900</b>	<b>\$ 1,000</b>	<b>\$ 100</b>	<b>\$ 150</b>	<b>\$ 25,150</b>
<b>1.2</b>	<b>Review of Available Data and Site Visits</b>													
1.2.1	Review Existing O&M Manual	4	8	12			\$ 3,120		\$ -	\$ 3,120	\$ 100	\$ 10	\$ -	\$ 3,230
1.2.2	Obtain and Review Maintenance Records	2	12	12			\$ 3,290		\$ -	\$ 3,290	\$ 100	\$ 10	\$ -	\$ 3,400
1.2.3	Obtain and Review Project Data	16	40	56			\$ 14,440		\$ -	\$ 14,440	\$ 400	\$ 40	\$ -	\$ 14,880
1.2.4	Field Reconnaissance	16	16	16			\$ 6,720		\$ -	\$ 6,720	\$ 300	\$ 30	\$ -	\$ 7,050
1.2.5	Document Special Areas & Unique Conditions	2	4	4			\$ 1,330		\$ -	\$ 1,330	\$ 100	\$ 10	\$ -	\$ 1,440
	<b>Subtotal (Task 1.2)</b>	<b>40</b>	<b>80</b>	<b>100</b>	<b>0</b>	<b>0</b>	<b>\$ 28,900</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 28,900</b>	<b>\$ 1,000</b>	<b>\$ 100</b>	<b>\$ -</b>	<b>\$ 30,000</b>
<b>1.3</b>	<b>Preparation of OMRR&amp;R Manual</b>													
1.3.1	Preface	1	2	2		8	\$ 1,225		\$ -	\$ 1,225	\$ 1,000	\$ 100	\$ -	\$ 2,325
1.3.2	Overview	1	2	2	20	8	\$ 3,125		\$ -	\$ 3,125		\$ -	\$ -	\$ 3,125
1.3.3	General	4	8	8		8	\$ 3,220		\$ -	\$ 3,220		\$ -	\$ -	\$ 3,220
1.3.4	Authorization	2	4	4		4	\$ 1,610		\$ -	\$ 1,610		\$ -	\$ -	\$ 1,610
1.3.5	Location and Access	4	8	10	14	4	\$ 4,500		\$ -	\$ 4,500		\$ -	\$ -	\$ 4,500
1.3.6	Pertinent Information	10	18	30		8	\$ 8,100		\$ -	\$ 8,100		\$ -	\$ -	\$ 8,100
1.3.7	Construction History	6	8	12	10	8	\$ 4,980		\$ -	\$ 4,980		\$ -	\$ -	\$ 4,980
1.3.8	Project Performance	4	8	8		4	\$ 2,940		\$ -	\$ 2,940		\$ -	\$ -	\$ 2,940
1.3.9	Project Cooperation Agreement	4	8	8		4	\$ 2,940		\$ -	\$ 2,940		\$ -	\$ -	\$ 2,940
1.3.10	Normal Operation & Maintenance	28	48	48	28	8	\$ 19,880		\$ -	\$ 19,880		\$ -	\$ -	\$ 19,880
1.3.11	Emergency Operation / Emergency Action Plan	16	48	48	30	8	\$ 17,970		\$ -	\$ 17,970		\$ -	\$ -	\$ 17,970
1.3.12	Inspection and Reports	6	12	12		4	\$ 4,270		\$ -	\$ 4,270		\$ -	\$ -	\$ 4,270
1.3.13	Surveillance	8	10	10		6	\$ 4,270		\$ -	\$ 4,270		\$ -	\$ -	\$ 4,270
1.3.14	Repair, Replacement and Rehabilitation	16	36	30	16	8	\$ 13,010		\$ -	\$ 13,010		\$ -	\$ -	\$ 13,010
1.3.15	Notification of Distress	4	8	8		4	\$ 2,940		\$ -	\$ 2,940		\$ -	\$ -	\$ 2,940
1.3.16	Version Control	4	8	8		8	\$ 3,220		\$ -	\$ 3,220		\$ -	\$ -	\$ 3,220
	<b>Subtotal (Task 1.3)</b>	<b>118</b>	<b>236</b>	<b>248</b>	<b>118</b>	<b>102</b>	<b>\$ 98,200</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 98,200</b>	<b>\$ 1,000</b>	<b>\$ 100</b>	<b>\$ -</b>	<b>\$ 99,300</b>
<b>1.4</b>	<b>Videography</b>	2	12					\$ 28,000	\$ 28,000	\$ 29,910			\$ 1,400	\$ 31,310
<b>1.5</b>	<b>Coordinate to Provide GIS Information</b>	8	40	24			\$ 9,360	\$ -	\$ -	\$ 9,360		\$ -	\$ -	\$ 9,360
<b>1.6</b>	<b>Address Unforeseen Field Conditions (To Be Authorized by District Project Manager)</b>									\$ -				\$ 50,000
	<b>Subtotal (Tasks 1.4, 1.5 and 1.6)</b>	<b>10</b>	<b>52</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>\$ 9,360</b>	<b>\$ 28,000</b>	<b>\$ 28,000</b>	<b>\$ 39,270</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,400</b>	<b>\$ 9,360</b>
	<b>Total (Project 1)</b>	<b>228</b>	<b>448</b>	<b>372</b>	<b>118</b>	<b>102</b>	<b>\$ 157,360</b>	<b>\$ 31,000</b>	<b>\$ 31,000</b>	<b>\$ 190,270</b>	<b>\$ 3,000</b>	<b>\$ 300</b>	<b>\$ 1,550</b>	<b>\$ 245,120</b>



Task	Task Description	HOURS					LABOR				ODCs	ODCs MARKUP	SUB MARKUP	TOTAL
		AGS					AGS	WRECO (SLEB)	Subtotal Subs	Total Labor				
		Principal A/E	Project A/E	Senior Staff A/E	CAD / Eng Tech	Project Administrator								
	Hourly Billing Rate	\$175.00	\$130.00	\$115.00	\$95.00	\$70.00						10%	5%	
<b>2</b>	<b>San Leandro Creek</b>													
<b>2.1</b>	<b>Project Coordination, Administration and Meetings</b>													
2.1.1	Project Initiation	2	2				\$ 610	\$ 1,000	\$ 1,000	\$ 1,610	\$ 50	\$ 5	\$ 50	\$ 1,715
2.1.2	Project Coordination and Management	12	12				\$ 3,660	\$ 8,000	\$ 8,000	\$ 11,660	\$ 200	\$ 20	\$ 400	\$ 12,280
2.1.3	USACE Levee Safety Program Meetings	2	2				\$ 610	\$ 1,000	\$ 1,000	\$ 1,610	\$ 50	\$ 5	\$ 50	\$ 1,715
2.1.4	Submittal Review Meetings	4	4				\$ 1,220	\$ 2,000	\$ 2,000	\$ 3,220	\$ 200	\$ 20	\$ 100	\$ 3,540
	<b>Subtotal (Task 2.1)</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 6,100</b>	<b>\$ 12,000</b>	<b>\$ 12,000</b>	<b>\$ 18,100</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ 600</b>	<b>\$ 19,250</b>
<b>2.2</b>	<b>Review of Available Data and Site Visits</b>													
2.2.1	Review Existing O&M Manual	2	4				\$ 870	\$ 2,000	\$ 2,000	\$ 2,870	\$ 50	\$ 5	\$ 100	\$ 3,025
2.2.2	Obtain and Review Maintenance Records		4				\$ 520	\$ 1,000	\$ 1,000	\$ 1,520	\$ 50	\$ 5	\$ 50	\$ 1,625
2.2.3	Obtain and Review Project Data	2	6				\$ 1,130	\$ 8,000	\$ 8,000	\$ 9,130	\$ 200	\$ 20	\$ 400	\$ 9,750
2.2.4	Field Reconnaissance	2	4				\$ 870	\$ 3,000	\$ 3,000	\$ 3,870	\$ 150	\$ 15	\$ 150	\$ 4,185
2.2.5	Document Special Areas & Unique Conditions	2	2				\$ 610	\$ 1,000	\$ 1,000	\$ 1,610	\$ 50	\$ 5	\$ 50	\$ 1,715
	<b>Subtotal (Task 2.2)</b>	<b>8</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 4,000</b>	<b>\$ 15,000</b>	<b>\$ 15,000</b>	<b>\$ 19,000</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ 750</b>	<b>\$ 20,300</b>
<b>2.3</b>	<b>Preparation of OMRR&amp;R Manual</b>													
2.3.1	Preface	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585	\$ 500	\$ 50	\$ 50	\$ 2,185
2.3.2	Overview	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585		\$ -	\$ 50	\$ 1,635
2.3.3	General	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585		\$ -	\$ 50	\$ 1,635
2.3.4	Authorization	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.5	Location and Access	1	1			2	\$ 445	\$ 2,000	\$ 2,000	\$ 2,445		\$ -	\$ 100	\$ 2,545
2.3.6	Pertinent Information	1	1			2	\$ 445	\$ 5,000	\$ 5,000	\$ 5,445		\$ -	\$ 250	\$ 5,695
2.3.7	Construction History	2	2			2	\$ 750	\$ 3,000	\$ 3,000	\$ 3,750		\$ -	\$ 150	\$ 3,900
2.3.8	Project Performance	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.9	Project Cooperation Agreement	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.10	Normal Operation & Maintenance	2	2			2	\$ 750	\$ 12,000	\$ 12,000	\$ 12,750		\$ -	\$ 600	\$ 13,350
2.3.11	Emergency Operation / Emergency Action Plan	2	2			2	\$ 750	\$ 10,000	\$ 10,000	\$ 10,750		\$ -	\$ 500	\$ 11,250
2.3.12	Inspection and Reports	1	1			2	\$ 445	\$ 3,000	\$ 3,000	\$ 3,445		\$ -	\$ 150	\$ 3,595
2.3.13	Surveillance	1	1			2	\$ 445	\$ 3,000	\$ 3,000	\$ 3,445		\$ -	\$ 150	\$ 3,595
2.3.14	Repair, Replacement and Rehabilitation	2	2			2	\$ 750	\$ 9,000	\$ 9,000	\$ 9,750		\$ -	\$ 450	\$ 10,200
2.3.15	Notification of Distress	1	1			2	\$ 445	\$ 1,000	\$ 1,000	\$ 1,445		\$ -	\$ 50	\$ 1,495
2.3.16	Version Control	1	1			4	\$ 585	\$ 1,000	\$ 1,000	\$ 1,585		\$ -	\$ 50	\$ 1,635
	<b>Subtotal (Task 2.3)</b>	<b>20</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>\$ 8,900</b>	<b>\$ 55,000</b>	<b>\$ 55,000</b>	<b>\$ 63,900</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ 2,750</b>	<b>\$ 67,200</b>
2.4	Videography	1	2				\$ 435	\$ 6,000	\$ 6,000	\$ 6,435		\$ -	\$ 300	\$ 6,735
2.5	Coordinate to Provide GIS Information	4	24	12			\$ 5,200	\$ -	\$ -	\$ 5,200		\$ -	\$ -	\$ 5,200
2.6	Address Unforeseen Field Conditions (To Be Authorized by District Project Manager)									\$ -				\$ 5,000
	<b>Subtotal (Tasks 2.4, 2.5 and 2.6)</b>	<b>5</b>	<b>26</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>\$ 5,635</b>	<b>\$ 6,000</b>	<b>\$ 6,000</b>	<b>\$ 11,635</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 300</b>	<b>\$ 11,935</b>
	<b>Total (Project 2)</b>	<b>53</b>	<b>86</b>	<b>12</b>	<b>0</b>	<b>40</b>	<b>\$ 24,635</b>	<b>\$ 88,000</b>	<b>\$ 88,000</b>	<b>\$ 112,635</b>	<b>\$ 1,500</b>	<b>\$ 150</b>	<b>\$ 4,400</b>	<b>\$ 123,685</b>



Task	Task Description	HOURS					LABOR				ODCs	ODCs MARKUP	SUB MARKUP	TOTAL
		AGS					AGS	WRECO (SLEB)	Subtotal Subs	Total Labor				
		Principal A/E	Project A/E	Senior Staff A/E	CAD / Eng Tech	Project Administrator								
Hourly Billing Rate		\$175.00	\$130.00	\$115.00	\$95.00	\$70.00					10%	5%		
<b>3</b>	<b>San Lorenzo Creek</b>													
<b>3.1</b>	<b>Project Coordination, Administration and Meetings</b>													
3.1.1	Project Initiation	2	2				\$ 610		\$ -	\$ 610	\$ 50	\$ 5	\$ -	\$ 665
3.1.2	Project Coordination and Management	28	40				\$ 10,100		\$ -	\$ 10,100	\$ 200	\$ 20	\$ -	\$ 10,320
3.1.3	USACE Levee Safety Program Meetings	2	2				\$ 610		\$ -	\$ 610	\$ 50	\$ 5	\$ -	\$ 665
3.1.4	Submittal Review Meetings	8	16				\$ 3,480		\$ -	\$ 3,480	\$ 200	\$ 20	\$ -	\$ 3,700
	<b>Subtotal (Task 3.1)</b>	<b>40</b>	<b>60</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$ 14,800</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 14,800</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ -</b>	<b>\$ 15,350</b>
<b>3.2</b>	<b>Review of Available Data and Site Visits</b>													
3.2.1	Review Existing O&M Manual	2	8	8			\$ 2,310		\$ -	\$ 2,310	\$ 50	\$ 5	\$ -	\$ 2,365
3.2.2	Obtain and Review Maintenance Records	2	8	8			\$ 2,310		\$ -	\$ 2,310	\$ 50	\$ 5	\$ -	\$ 2,365
3.2.3	Obtain and Review Project Data	8	28	48			\$ 10,560		\$ -	\$ 10,560	\$ 200	\$ 20	\$ -	\$ 10,780
3.2.4	Field Reconnaissance	6	12	12			\$ 3,990		\$ -	\$ 3,990	\$ 150	\$ 15	\$ -	\$ 4,155
3.2.5	Document Special Areas & Unique Conditions	2	4	4			\$ 1,330		\$ -	\$ 1,330	\$ 50	\$ 5	\$ -	\$ 1,385
	<b>Subtotal (Task 3.2)</b>	<b>20</b>	<b>60</b>	<b>80</b>	<b>0</b>	<b>0</b>	<b>\$ 20,500</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 20,500</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ -</b>	<b>\$ 21,050</b>
<b>3.3</b>	<b>Preparation of OMRR&amp;R Manual</b>													
3.3.1	Preface	1	2	2		4	\$ 945		\$ -	\$ 945	\$ 500	\$ 50	\$ -	\$ 1,495
3.3.2	Overview	1	2	2	4	4	\$ 1,325		\$ -	\$ 1,325		\$ -	\$ -	\$ 1,325
3.3.3	General	1	2	2		4	\$ 945		\$ -	\$ 945		\$ -	\$ -	\$ 945
3.3.4	Authorization	1	2	2		2	\$ 805		\$ -	\$ 805		\$ -	\$ -	\$ 805
3.3.5	Location and Access	2	8	8	4	2	\$ 2,830		\$ -	\$ 2,830		\$ -	\$ -	\$ 2,830
3.3.6	Pertinent Information	6	16	16		2	\$ 5,110		\$ -	\$ 5,110		\$ -	\$ -	\$ 5,110
3.3.7	Construction History	6	10	10	4	2	\$ 4,020		\$ -	\$ 4,020		\$ -	\$ -	\$ 4,020
3.3.8	Project Performance	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.9	Project Cooperation Agreement	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.10	Normal Operation & Maintenance	20	30	30	20	2	\$ 12,890		\$ -	\$ 12,890		\$ -	\$ -	\$ 12,890
3.3.11	Emergency Operation / Emergency Action Plan	18	30	30	10	2	\$ 11,590		\$ -	\$ 11,590		\$ -	\$ -	\$ 11,590
3.3.12	Inspection and Reports	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.13	Surveillance	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.14	Repair, Replacement and Rehabilitation	12	26	26	10	2	\$ 9,560		\$ -	\$ 9,560		\$ -	\$ -	\$ 9,560
3.3.15	Notification of Distress	2	8	8		2	\$ 2,450		\$ -	\$ 2,450		\$ -	\$ -	\$ 2,450
3.3.16	Version Control	2	8	8		4	\$ 2,590		\$ -	\$ 2,590		\$ -	\$ -	\$ 2,590
	<b>Subtotal (Task 3.3)</b>	<b>80</b>	<b>176</b>	<b>176</b>	<b>52</b>	<b>40</b>	<b>\$ 64,860</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 64,860</b>	<b>\$ 500</b>	<b>\$ 50</b>	<b>\$ -</b>	<b>\$ 65,410</b>
<b>3.4</b>	<b>Videography</b>	1	6				\$ 955	\$ 16,000	\$ 16,000	\$ 16,955		\$ -	\$ 800	\$ 17,755
<b>3.5</b>	<b>Coordinate to Provide GIS Information</b>	4	30	16			\$ 6,440	\$ -	\$ -	\$ 6,440		\$ -	\$ -	\$ 6,440
<b>3.6</b>	<b>Address Unforseen Field Conditions (To Be Authorized by District Project Manager)</b>									\$ -				\$ 10,000
	<b>Subtotal (Tasks 3.4, 3.5 and 3.6)</b>	<b>5</b>	<b>36</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>\$ 7,395</b>	<b>\$ 16,000</b>	<b>\$ 16,000</b>	<b>\$ 23,395</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 800</b>	<b>\$ 24,195</b>
	<b>Total (Project 3)</b>	<b>145</b>	<b>332</b>	<b>272</b>	<b>52</b>	<b>40</b>	<b>\$ 107,555</b>	<b>\$ 16,000</b>	<b>\$ 16,000</b>	<b>\$ 123,555</b>	<b>\$ 1,500</b>	<b>\$ 150</b>	<b>\$ 800</b>	<b>\$ 136,005</b>
	<b>Grand Total</b>	<b>426</b>	<b>866</b>	<b>656</b>	<b>170</b>	<b>182</b>	<b>\$ 289,550</b>	<b>\$ 135,000</b>	<b>\$ 135,000</b>	<b>\$ 426,460</b>	<b>\$ 6,000</b>	<b>\$ 600</b>	<b>\$ 6,750</b>	<b>\$ 504,810</b>

Total Fee \$ 504,810  
Total SLEB \$ 135,000  
% SLEB 27%

## APPENDIX C

## INSURANCE

This is an appendix attached to, and made a part of the Agreement dated June 10, 2014, by and between the Alameda County Flood Control and Water Conservation District (“District”) and AGS, Inc. (“Consultant”), providing for professional services.

- A. Consultant is required to maintain at all times during the performance of this Agreement the following insurance coverage: The Certificate of Insurance is attached hereto as Appendix C-Exhibit 1.
1. Workers’ Compensation Employers’ Liability limits not less than \$1,000,000 each occurrence, \$1,000,000 per disease, and \$1,000,000 each employee. Consultant’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California. Employers’ Liability Coverage endorsement shall specify as entity and endorsement holder the District, its Board of Supervisors, the individual members thereof, and all District officers, agents, employees, and volunteers.
  2. Occurrence-based Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$2,000,000 Aggregate. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant’s or subcontractor’s or subconsultant’s operations.
  3. Occurrence-based Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 million each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
  4. Professional Liability Insurance with limits not less than \$1,000,000 each claim and \$3,000,000 in the aggregate with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$75,000 each claim.
- B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as Additional Insured County of Alameda, District, its Board of Supervisors, the individual members thereof, and all County and District officers, agents, employees, and volunteers.

2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the addition of one or more entities shall not affect the insurer's limit of liability.
- C. All policies shall be endorsed to provide thirty (30) days advance written notice to District of cancellation, and certificates of all policies and endorsements shall be mailed to District as provided in the Agreement per Paragraph 17.1.3.
  - D. District may, at its sole option, terminate this Agreement on 15 days' notice to Consultant (but during such 15-day period, Consultant has the opportunity to cure the default) in the event of any lapse of required insurance coverage. District may, at its option, secure sufficient insurance coverage to replace any required insurance coverage which has lapsed, and Consultant hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage.
  - E. Insurance shall be maintained through an insurer and with deductible amounts acceptable to District. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement, without lapse, and shall provide a discovery period for a period of three years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made within four years after expiration of the Agreement, such claims shall be covered by such claims-made policies.
  - F. Certificates of insurance, in form and with insurers satisfactory to District, evidencing all coverages above shall be furnished to District before commencing any operation under this Agreement, with complete copies of policies promptly upon District request.
  - G. Approval of the insurance by District shall not relieve or decrease the liability of Consultant hereunder.
  - H. If Consultant is an association or partnership, the association or partnership shall be insured by any one of the following methods:
    1. Separate insurance policies issued with the association or partnership as named insured.
    2. All insurance policies required by this Agreement of one of the participants to include the association or partnership as named insured.
    3. The association or partnership must be a named insured on all of the policies required by this Agreement.

END OF APPENDIX C

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/13/2014


<b>PRODUCER</b> Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> AGS, Inc. 5 Freelon Street San Francisco, CA 94107-3617	INSURER A: <b>American Ins. Co.</b>	
	INSURER B: <b>American Automobile Ins. Co.</b>	<b>21849</b>
	INSURER C: <b>Hudson Insurance Company</b>	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	AZC80891201	10/28/13	10/28/14	EACH OCCURRENCE	\$2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$2,000,000
						GENERAL AGGREGATE	\$4,000,000
						PRODUCTS - COMP/OP AGG	\$4,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AZC80891201	10/28/13	10/28/14	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
							\$
B		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WZP81012104	09/01/13	09/01/14	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
C		<b>OTHER Professional Liability</b>	AEE7211406	10/10/13	10/10/14	<b>\$1,000,000 per claim</b> <b>\$1,000,000 annl aggr.</b>	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**General Liability Excludes Claims Arising Out of the Performance of Professional Services.**  
**Project Name/Number: Alameda County O&M Manuals/AGS-14-021.**  
**County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives are additional insureds as respects to General & Automobile Liability per policy form wording. See attachments.**

<b>CERTIFICATE HOLDER</b> County of Alameda Flood Control & Water Conservation District Attn: Anita Franklin 399 Elmhurst Street Hayward, CA 94544	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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# Additional Insured - Owners, Lessees or Contractors - AB 90 67 12 93

Policy Amendment Section II

Insured AGS, Inc.

Policy Number AZC80891201

Producer Dealey, Renton & Associates

Effective Date 10/28/13

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## Schedule

### Name of Person(s) or Organization(s)

County of Alameda Flood Control &  
Water Conservation District  
Attn: Anita Franklin  
399 Elmhurst Street

(If no entry appears above, information required to complete this Endorsement will be shown in the Declarations as applicable to this Endorsement.)

The following is added to Part I - WHO IS AN INSURED in the Business Liability Section of this policy

arising out of **your work** for that insured by or for you.

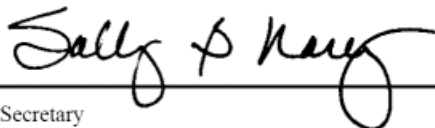
5. The person or organization shown in the Schedule is also an insured, but only with respect to liability

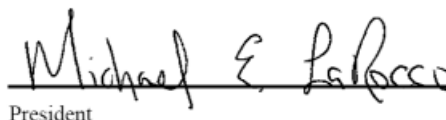
All other terms and conditions of the policy apply.

SCHEDULE NAME OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS CONT: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives

This Form must be attached to Change Endorsement when issued after the policy is written.

One of the **Fireman's Fund Insurance Companies** as named in the policy

  
Secretary

  
President



# ABC MultiCover - AB 91 89 08 07

This endorsement modifies insurance provided under the following:

## American Business Coverage

Your policy is broadened and clarified as follows:

### 1. Non Employment Discrimination Liability

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 17. Personal Injury is amended to include:

f. **Discrimination**

B. **Section III - Definitions**, Item 2. Advertising Injury is amended to include:

e. **Discrimination**

C. **Section III - Definitions** is amended to include:

30. **Discrimination** means the unlawful treatment of individuals based on race, color, ethnic origin, gender, religion, age, or sexual preference.

D. **Section II - Liability Coverage, Part H. Exclusions**, Item 1.p **Personal Injury** or **Advertising Injury** is amended to include:

(11) Arising out of **discrimination** directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any insured; or

(12) Arising out of **discrimination** directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling,

permanent lodging, or premises by or at the direction of any insured; or

(13) Arising out of **discrimination**, if insurance thereof is prohibited by law; or

(14) Fines, penalties, specific performance, or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of **discrimination**.

### 2. Blanket Additional Insured

**Section II - Liability Coverage, Part I. Who Is An Insured**, Item 2. is amended to include:

f. Any person or organization that you are required by a written **insured contract** to include as an insured, subject to all of the following provisions:

(1) Coverage is limited to their liability arising out of:

(a) the ownership, maintenance or use of that part of the premises, or land owned by, rented to, or leased to you; or

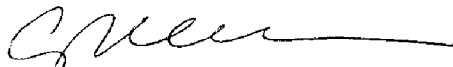
(b) your ongoing operations performed for that insured; or

(c) that insured's financial control of you; or

(d) the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s); or

This Form must be attached to Change Endorsement when issued after the policy is written.

One of the **Fireman's Fund Insurance Companies** as named in the policy



Secretary



President

- (e) a state or political subdivision permit issued to you.
- (2) Coverage does not apply to any **occurrence** or offense:
  - (a) which took place before the execution of, or subsequent to the completion or expiration of, the written **insured contract**, or
  - (b) which takes place after you cease to be a tenant in that premises.
- (3) With respect to architects, engineers, or surveyors, coverage does not apply to **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** arising out of the rendering or the failure to render any professional services by or for you including:
  - (a) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
  - (b) Supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

3. Blanket Additional Insured for Vendors

Unless the **Products-Completed Operations Hazard** is excluded from this policy, **Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2. is amended to include:

- g. Any vendor but only with respect to **Bodily Injury** or **Property Damage** arising out of **your products** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1. The insurance afforded the vendor does not apply to:
    - a. **Bodily Injury** or **Property Damage** for which the vendor is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container.
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

If an Additional Insured - Vendors endorsement is attached to this policy that specifically names a person or organization as an insured, then this coverage does not apply to that person or organization.

4. Blanket Waiver of Subrogation

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.
- b. If required by a written insured contract, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your operations or your work for that person or organization.

5. Broadened Named Insured

**Section II - Liability Coverage, Part I. Who Is An Insured**, Item 4. is replaced with:

4. All of your subsidiaries, companies, corporations, firms, or organizations, as now or hereafter constituted, qualify as Named Insured under this policy if:
  - (a) you have the responsibility of placing insurance for each such entity; and
  - (b) coverage for the entity is not otherwise more specifically provided; and
  - (c) the entity is incorporated or organized under the laws of the United States of America.

But each entity is insured only while you own, during the policy period, a controlling interest in such entity of greater than 50% of the stock or assets. However:

- (a) Coverage under this provision is afforded only until the end of the policy period, or the 12 month anniversary of the policy inception date, whichever is earlier;
- (b) Coverage C does not apply to **bodily injury** or **property damage** that occurred

before you acquired or formed the organization;

- (c) Coverage C does not apply to **personal injury** or **advertising injury** arising out of an offense committed before you acquired or formed the organization.

6. Medical Payments

Unless **Coverage D. Medical Payments** is excluded from this policy:

A. **Section II - Liability Coverage, Part H. Exclusions**, Item 2.f. is replaced with:

- f. Included within the **products-completed operations hazard**. However, this exclusion does not apply to expenses for dental services.

B. **Section II - Liability Coverage, Part G. Coverage, Item 2.**, is amended to include:

- c. **Coverage D. Medical Payments** is primary and not contributing with any other insurance, even if that other insurance is primary also.

7. Tenant's Legal Liability

A. **Section III - Liability Coverage, Part J. Liability and Medical Payments Limits of Insurance**, Item 3. is replaced with:

3. The most we will pay under Coverage C - Liability for damages because of **property damage** to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner:
  - a. arising out of any Covered Cause of Loss shall be the greater of:
    - (1) \$1,000,000; or
    - (2) The Tenant's Legal Liability limit shown in the Declarations.

8. Chartered Aircraft

**Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Item 1.g. is amended to include:

- (5) An aircraft in which you have no ownership interest and that you have chartered with crew.

9. Coverage Territory Broadened

**Section III - Definitions**, Item 5.a. is replaced with:

- a. The United States of America (including its territories and possessions), Puerto Rico, Canada, Bermuda, the Bahamas, the Cayman Islands and the British Virgin Islands.

10. Broadened Advertising Injury

Unless **Advertising Injury** is excluded from this policy:

A. **Section III - Definitions**, Item 2. is replaced with:

2. **Advertising Injury** means injury arising out of one or more of the following offenses:
  - a. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of trademark, copyright, title or slogan.

B. **Section II - Liability Coverage, Coverage C, Part H. Exclusions**, Items 1.p.(1) and (2) are replaced with:

- (1) Arising out of oral, written, televised or videotaped publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written, televised or videotaped publication of material whose first publication took place before the beginning of the policy period;

11. Broadened Personal Injury

Unless **Personal Injury** is excluded from this policy, **Section III - Property, Liability and Medical**

**Payments Definitions**, Items 17.b., d. and e. are replaced with:

- b. Malicious prosecution or abuse of process;
- d. Oral, written, televised or videotaped publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral, written, televised or videotaped publication of material that violates a person's right of privacy;

12. Broadened Personal or Advertising Injury

Unless **Personal Injury** or **Advertising Injury** is excluded from this policy, **Section II - Liability Coverage, Coverage C, Part H. Exclusions, Item 1.p.(4) Exclusions** is deleted in its entirety.

13. Fellow Employees Coverage

**Section II - Liability Coverage, Part I. Who Is an Insured**, Item 2.a.(1) is amended as follows:

- (1) **Personal Injury** to you or to a co-employee while in the course of his or her employment, or the spouse, child, fetus, embryo, parent, brother, sister or any member of the household of that employee or co-employee as a consequence of such **Personal Injury**, or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

14. Mental Anguish Is Included in Bodily Injury

**Section III - Definitions**, Item 4. is replaced with:

4. **Bodily injury** means **bodily injury**, sickness or disease sustained by a person. It includes death or mental anguish which result at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or disease.

15. Unintentional Failure to Disclose Hazards

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions**, is amended to include:

6. Unintentional Failure to Disclose Hazards

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

16. Supplementary Payments, Increase Limits

**Section II - Liability Coverage, Part G. Coverage,** Items 1.e. (2) and (4) are replaced with:

- (2) The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or suit including substantiated loss of earnings up to \$500 a day because of time off work.

17. Per Location Aggregate

A. **Section II - Liability Coverage, Part J. Limits of Insurance,** Item 4. is amended to include:

The Aggregate Limit of Insurance applies separately to each **location** owned by you, rented to you, or occupied by you with the permission of the owner.

B. **Section III - Property, Liability and Medical Payments Definitions,** is amended to include:

31. **Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of railroad.

18. Amended Duties in the Event of an Occurrence, Offense Claim or Suit

**Section II - Liability Coverage, Part K. Liability and Medical Payments General Conditions,** Items 2.a. and b. are replaced with:

- a. In the event of an **occurrence**, offense, claim, or **suit**, you must promptly notify us. Your duty to promptly notify us is effective when your executive officers, partners, members, or

legal representatives are aware of the General Liability **occurrence**, offense, claim, or **suit**. Knowledge of an **occurrence**, offense, claim, or **suit** by other employee(s) does not imply you also have such knowledge.

- b. To the extent possible, notice to us should include:

- (1) How, when and where the **occurrence** or offense took place;
- (2) The names, addresses, and telephone numbers of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the occurrence, offense, claim, or **suit**.

19. **Common Policy Conditions (AB 00 09 A 01 87), Part H. Other Insurance,** Item 2. is replaced with:

2. Coverage C - Liability

If other valid and collectible insurance is available to **any** insured for a loss we cover under Coverage C of this Coverage Part our obligations are limited as follows:

- a. The insurance provided under this policy is primary if you are required by a written **insured contract** to include any person or organization as an insured, but only with respect to that insured's liability arising out of the ownership, maintenance, or use of that part of the premises owned by or rented to **you**, or **your work** for that insured by or for you. Any other insurance available to that person or organization is excess and noncontributory with this insurance, or;
- b. Except for the circumstance described in 2.a., above, the insurance provided under this policy is excess over any other liability insurance available to any insured whether such other insurance is written as primary, excess, contingent or any other basis. An exception applies when any insured specifically has purchased excess insurance to apply in excess of the limits of insurance shown in the Declarations of this Coverage Part for Coverage C.

20. Damage to Invitees' Automobiles from Falling Trees or Tree Limbs - Limited Coverage

The policy applies to direct physical damage to automobiles owned by invitees subject to all of the following:

1. Provided such damage originates from premises owned, managed, leased or rented by an insured;
2. Coverage applies only to invitees of an insured or an insured's tenant;
3. Such damage is directly caused by wind-driven falling trees or tree limbs;
4. The most we will pay for any one loss is the lesser of the actual cash value of the damaged automobile as of the time of the loss; or the cost of repairing or replacing the damaged automobile with another automobile of like

kind and quality; subject to a limit of \$25,000 in any one policy period; and

5. This coverage is not subject to the General Liability General Aggregate Limit.

21. Expected or Intended Injury - Amendment to Exclusion

SECTION I. - 2. EXCLUSIONS a. Expected or Intended Injury, is replaced by the following:

- a. Expected or Intended Injury

**Bodily injury or property damage** expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

All other terms and conditions of the policy apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## DESIGNATED INSURED


This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective 10/28/13	
Named Insured AGS, Inc.	Countersigned by 

(Authorized Representative)

### SCHEDULE

**Name of Person(s) or Organization(s):**

SCHEDULE NAME OF ADDITIONAL INSURED PERSONS OR ORGANIZATIONS CONT: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

APPENDIX D

**DEBARMENT AND SUSPENSION CERTIFICATION**

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named subcontractor:

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


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

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

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

CONTRACTOR: AGS, Inc.

PRINCIPAL: Denis Luy TITLE: President

SIGNATURE:  DATE: 5/3/14

END OF APPENDIX D



## APPENDIX "E"

**CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County which have a start date on or after July 1, 2007 should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at [http://www.elationsys.com/elationsys/support\\_1.htm](http://www.elationsys.com/elationsys/support_1.htm) or call Elation Systems at (510) 764-1870. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

## PRE-CONTRACTING DATA FORM

**INSTRUCTIONS**

This Pre-Contracting Data Form is to be completed by department/agency staff **BEFORE** a worker is hired as an independent contractor. The following information is necessary to help determine the type of work to be performed. Be sure to answer **ALL** of the questions and forward to the Human Resource Services Department for approval.

**REMINDER: No work under any contract may begin until ALL approvals have been received.**

**I. INFORMATION ABOUT CONTRACTOR**

Name of Proposed Contractor: Dennis Wong, PE

Name of Company: AGS, Inc.

Type of Business: CIVIL ENGINEERING CONSULTANT

Address: 1814 Franklin Street #315 Phone: (510) 251-1180

Oakland, CA 94612

Sole Proprietor                       Partnership                       Limited Liability Company (LLC)

Social Security Number: \_\_\_\_\_ Federal Tax ID: 06-0010385

Description of Service: Civil Engineering Services for updating Operations and Maintenance Manuals for U.S. Army Corps of Engineers constructed flood control projects in Alameda County, in Flood Control Zones 2, 5 and 12

Proposed Term of Contract: Beginning Date: June 10, 2014 Ending Date: May 31, 2016

Proposed Pay Rate: Hourly: N/A Bi-Weekly: N/A Monthly: N/A Flat Rate: N/A

Reason for contract (special projects, season, etc): Specialized knowledge and personnel required for the updating of the U.S. Army Corps of Engineers' Operation and Maintenance Manuals

Detailed written description of the duties for the proposed contractor:

Assist District staff in updating the O&M Manuals, including consultation with the USACE staff to discuss goals and concerns; review existing O&M manuals; collect relevant information (such as maintenance records, current maintenance practices, as-built plans for repairs and improvements to the original constructed channel, surveys, hydrologic and hydraulics studies, geotechnical and geological studies, environmental studies and previous USACE inspection reports) to be incorporated in the new O&M manuals; conduct field reconnaissance to confirm existence of improvements and identify existing conditions that may need to be incorporated; conduct videotaping/inspection of the conditions inside conduits that penetrate levees to assess their conditions; identify and document areas of special concern (such as endangered species or habitat, significant utility crossings or facilities, non-complaint vegetation, right-of-way issues, emergency access limitations, non-District facilities); prepare project-specific Emergency Action Plans which will cover preparation for and responses to project emergency conditions that could occur due to flood related failures; and prepare 30%, 60%, 90% and final version of the updated O&M manuals to be reviewed by the District and USACE.

**NOTE: PLEASE ATTACH A COPY OF THE ALCOLINK REQUISITION**

**INDEPENDENT CONTRACTOR PRE-HIRE WORKSHEET**

**INSTRUCTIONS**

This Pre-Hire Worksheet is to be completed by department/agency staff **BEFORE** a worker is hired as an independent contractor. The following checklist is necessary to help determine whether an employer/employee relationship exists. Be sure to answer **ALL** of the questions and forward to the Human Resource Services Department for approval.

An employer/employee relationship may be deemed to exist if the answers to the following questions yield “Yes” responses.

**REMINDER: No work under any contract may begin until ALL approvals have been received.**

**I. INFORMATION ABOUT CONTRACTOR**

Name: Dennis Wong, PE

Name of Company: AGS, Inc.

Type of Business: CIVIL ENGINEERING CONSULTANT

Address: 1814 Franklin Street #315, Oakland, CA 94612 Phone: (510) 251-1180

Sole Proprietor                       Partnership                       Limited Liability Company

Social Security Number: \_\_\_\_\_ Federal Tax ID: 68-0010385

Individual has not previously contracted with the County

Individual has previously contracted with the County

Service provided \_\_\_\_\_

Individual is currently a contractor with the County

Service provided \_\_\_\_\_

Is this contract being sought to fill a temporary vacancy created by an employee who is out on Worker’s Compensation, Americans with Disabilities Act or Family Medical Leave Act leave?  
NO.

If yes, complete only Section I and contact the Human Resource Services Department (HRSD) to finalize this contract.

**II. MULTIPLE RELATIONSHIPS WITH THE COUNTY**

1. Is this individual on record as a current employee? (Current employees may not contract with the County)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Is this individual on record as a retired Alameda County employee? If no, is it expected that the county will hire this individual as an employee following the termination of this service contract?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Was the individual an Alameda County employee or a temporary employee any time during the last year and did he or she provide the same or similar services while an employee?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**III. RELATIONSHIP OF PARTIES**

**Intent:** Intent of parties concerning status and control of contractor; expected relationship between County and contractor.

1. Is the relationship between the county and the contractor intended to be longer than one year?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2. Is the work to be performed part of the regular business of the County?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Is the contractor doing work that would otherwise be done by a County employee? (i.e., are there County positions with the same or similar duties?)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Will the contractor receive any benefits that are normally paid to employees?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**Integration:** Significant melding of contractor and staff roles.

1. Does the contractor provide services that are integrated into the business of County departments? (i.e., does the success of continuation of the County's business depend significantly on the performance of certain services that this contractor will provide?)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Will this contractor be assigned a specific office or workplace?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Will this contractor be assigned to a personal telephone number?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Will the County provide employees as assistant workers?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. Will the contractor have County business cards?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**Control:** Measure of Independence

1. Will County staff train this contractor?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Will the County require this contractor to attend County meetings, to comply with instructions, and to work substantially full-time?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Will the County require this contractor to work set hours?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Will this contractor use County tools and materials?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. Will this contractor be precluded from realizing a profit or loss?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6. Will the County pay the contractor by the hour, week, or month?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**IV. DETERMINATION**

If you have answered YES to any of these questions, then you MAY NOT hire this individual as an independent contractor. Please contact your Human Resources Analyst to explore other options.

A copy of this worksheet *must* be submitted to the Human Resource Services Department for authorization before preparing a Standard Services Agreement.

Agency/Department: ALAMEDA COUNTY PUBLIC WORKS AGENCY, ENGINEERING, FLOOD CONTROL

Agency/Department Contact Person: MOSES TSANG

Phone: 510-670-6549

DF  
HRS Department Authorization

5/21/14  
Date