



Daniel Woldesenbet, Ph.D., P.E., Director

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December 24, 2024

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

**SUBJECT:** APPROVE AND EXECUTE A CONTRACT (PROCUREMENT CONTRACT NUMBER 27979) WITH CONVEY, INC. TO PROVIDE ON-CALL STRATEGIC AND TECHNICAL SUPPORT SERVICES, WITH A CONTRACT PERIOD 1/8/2025 THROUGH 12/31/2029, IN THE AMOUNT NOT TO EXCEED \$1,250,000

Dear Board Members:

**RECOMMENDATION:**

Approve and execute a contract (Procurement Contract Number: 27979) between the Alameda County Flood Control and Water Conservation District and Convey, Inc. (Principal: Sybil Hatch, Location: Emeryville) to provide on-call strategic and technical support services, with a contract period 1/8/2025 through 12/31/2029, in the amount not to exceed \$1,250,000.

**DISCUSSION/SUMMARY:**

The Alameda County Flood Control and Water Conservation District (District) desires to obtain professional support services on a task-order basis. Activities may include, but are not limited to, assisting staff with preparing and publishing the District's annual report; assisting with the production of technical reports and updates to existing technical documentation; identifying potential federal, state, and local grants for which the District might qualify, and preparing such grant applications for submittal by the District; assisting with updates and upgrades to the District's website; preparing nomination papers and documentation for various projects and staff awards from organizations such as the American Public Works Association; the American Society of Civil Engineers, the Floodplain Management Association, and others; assisting District staff with the development of multi-partner, multi-use and multi-benefit projects that reduce overall District project costs through the shared cost of combined uses of District facilities; and assisting with the development of informational materials in support of various District initiatives.

**SELECTION CRITERIA/PROCESS:**

*A qualifications-based selection method was followed as mandated by Government Code Sections 4525-4529.5 for selecting professional firms. In addition, firms were 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 Qualifications (RFQ) was issued on 9/16/2024 and emailed to all consultants providing the required professional services identified in the County SLEB and the Public Works Agency databases. The RFQ was also posted on the ACPWA's website for 30 days. A Pre-Submittal Conference was held on 9/24/2024. Six (6) consulting firms attended, including two (2) SLEB certified firms. One (1) SLEB certified firm submitted Statements of Qualifications (SOQs).*

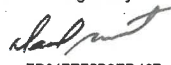
*Evaluation criteria included relevant experience, qualifications, written proposal, level of SLEB participation, and overall approach to services delivery. Upon evaluation, the submittal was determined to be acceptable and was selected to enter into contract negotiation with the District. Convey, Inc. is SLEB certified (#05-90690; expiration 7/31/2025).*

**FINANCING:**

First year funding for this contract is included in the Alameda County Flood Control District Flood Funds Fiscal Year 2024-2025 Approved Budget, with future years funding included in the District's annual budget requests. There is no impact to the County General Fund, and no increase in net County cost as a result of this action.

**VISION 2026 GOAL:**

The various tasks undertaken through this contract help advance the 10X goal of **Accessible Infrastructure** by enhancing the District's ability to maintain and preserve vital flood control infrastructure, enhance and restore the natural environment which will ultimately help us achieve our shared visions of **Safe and Livable Communities** and a **Thriving and Resilient Population**.

Yours truly,  
DocuSigned by:  
  
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Daniel Woldesenbet, Ph.D., P.E.  
Director of Public Works

Attachment

c: Susan Muranishi, County Administrator  
Clerk of the Board  
Auditor - Controller  
Martin de los Angeles, Deputy County Counsel  
Isaac Hao Li, County Administrator's Office

DW/MT/mt

**Professional Services Agreement**

**With**

**Convey, Inc.**

**for**

**On-call Strategic Professional and Technical Support Services**

**Contract No. 27979**

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

**AGREEMENT BETWEEN**  
**THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
**AND**  
**CONVEY, INC.**

This AGREEMENT is made this the 7<sup>th</sup> day of January, 2025, in the City of Oakland, State of California, by and between **Convey, Inc., 1250 45<sup>th</sup> Street, Suite 250, Emeryville, CA 94608**, hereinafter referred to as "CONSULTANT," and the **Alameda County Flood Control and Water Conservation District**, a body corporate and politic, hereinafter referred to as "DISTRICT."

**AGREEMENT**

**1. Definitions**

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

**AGREEMENT** This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "C", "D", "E", and "F" attached hereto.

**CONSULTANT** **Convey, Inc.**

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

**Project** The DISTRICT's project – On-call Strategic Professional and Technical Support Services - as further described in Appendix "A", Scope of Services

**Services** All work, labor, materials, and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

**Subconsultant or Subcontractor** 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 January 8, 2025 through December 31, 2029.

**3. Services Consultant Agrees to Perform**

3.1 CONSULTANT shall perform all Services described in Appendix "A", "Scope of Services" to be provided by CONSULTANT, attached hereto and incorporated by reference as though fully set forth herein.

3.2 CONSULTANT and DISTRICT shall mutually agree upon a specific work requirement, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks will be performed on a "time and material" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be as shown in the Fee Schedule Appendix B-1. CONSULTANT shall complete all Services required by this Agreement within the times specified by mutual agreement. CONSULTANT shall achieve its agreed-upon time frames 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, unforeseeable pandemic, 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 non-excusable 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 not entitle CONSULTANT to extra costs).
- 3.4 Should the progress of the Services under this AGREEMENT at any time fall behind schedule for any reason other than excusable delays, CONSULTANT shall apply such additional manpower and resources as necessary to bring progress of the Services under this AGREEMENT back on schedule and consistent with the standard of professional skill and care required by this AGREEMENT. Time is of critical importance in the performance of this AGREEMENT.

#### **4. Compensation**

- 4.1 DISTRICT shall pay CONSULTANT compensation according to the Payment Terms 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 for which payment 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 of its determination, 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, 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 Sybil Hatch, Principal, 1250 45<sup>th</sup> Street, Suite 250, Emeryville, CA 94608 and CONSULTANT shall direct all communications to "DISTRICT" through DISTRICT's Project Manager.
- 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," "Scope of 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 "Payment Terms" to CONSULTANT established in Appendix "B." Billing rates for CONSULTANT shall be from the "Fee Schedule Rates" established in Appendix "B-1."
- 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 the time such licenses and/or permits are required. CONSULTANT also represents that it has reasonable knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 CONSULTANT represents that it and its sub-consultants 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 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify, defend, and hold harmless the DISTRICT, and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, losses, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expenses, liabilities of every kind, nature and description (including, without limitation, incidental special and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise from, or are brought

for, or on account of any loss or cost arising out of, pertaining to, relating to or resulting from Consultant's negligence, recklessness, or willful misconduct in connection with the performance of any work performed under this AGREEMENT by the Consultants as a design professional; provided that this duty shall not apply to injuries or damages for which the DISTRICT has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence, recklessness, or willful misconduct.

8.2 Consultant shall defend (with legal counsel reasonably acceptable to the DISTRICT), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for 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 any of the other Indemnitees, of Articles or Services to be supplied in the performance of this Agreement.

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. Consultant shall require all subconsultants to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Appendix "C." Consultant shall verify subconsultant's compliance.

8.5 [Intentionally Omitted]

## **9. Liability of District**

9.1 Except as provided in Appendix "A," Scope of 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 AGREEMENT, CONSULTANT shall furnish to DISTRICT satisfactory proof that it maintains the insurance required by this AGREEMENT 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 AGREEMENT (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, DISTRICT believes that CONSULTANT may be failing to complete the Services as required by this AGREEMENT, or DISTRICT 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 the 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 County 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-existing 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 to performing Services.

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 three (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 three-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 three-month period or extension. If CONSULTANT fails to submit the termination claim within the time allowed, DISTRICT may determine, on the 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 Terms 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 the 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 costs 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:

Alameda County Flood Control and  
Water Conservation District  
Moses Tsang, Deputy Director  
399 Elmhurst Street  
Hayward, CA 94544

To CONSULTANT:

Convey, Inc.  
Sybil Hatch, Principal  
1250 45<sup>th</sup> Street, Suite 250  
Emeryville, CA 94608

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

## 18. Ownership of Results/Work for Hire

18.1 Any interest (including, but not limited to, property interests and copyright interests) of CONSULTANT or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by CONSULTANT or its Subconsultants in connection with Services to be performed under this AGREEMENT shall become the property of and will be transmitted to DISTRICT at the conclusion of this AGREEMENT. CONSULTANT may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the CONSULTANT's activities, CONSULTANT shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project. DISTRICT shall indemnify, hold harmless, and defend CONSULTANT against any and all claims, liabilities, losses and costs arising from DISTRICT's use of CONSULTANT's documents on work for which CONSULTANT is not retained.

18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by CONSULTANT or its Subconsultants in connection with Services performed under this AGREEMENT shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of DISTRICT. In the event that it is ever determined that any works created by CONSULTANT or its Subconsultants under this AGREEMENT are not Works for Hire under U.S. law, CONSULTANT hereby assigns all copyrights to such works to DISTRICT. With the prior written

approval of the DISTRICT, CONSULTANT may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **19. Audit and Inspection Records**

- 19.1 CONSULTANT shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to CONSULTANT during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to DISTRICT, and DISTRICT's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of CONSULTANT's personnel costs, CONSULTANT costs, and reimbursable expenses 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.

## 21. SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:

Consultant has been certified by the County as a small or emerging local business. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision. If during the term of this contract, Consultant's certification status changes, Consultant shall notify the District within three business days.

**Should Consultant's status as a certified small or emerging local business change at any time during the term of this Agreement,** Consultant shall negotiate with County to be in compliance with the County's Small and Emerging Local Business provision, including but not limited to:

- a. Consultant must subcontract a minimum 20% of the remaining contract value with a certified small or emerging local business(es).
- b. SLEB subconsultant (s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. As is applicable, Consultant shall ensure that their certification status is maintained in compliance with the SLEB Program for the term of this contract.
- d. For any subconsultants retained to comply with this provision, Consultant shall not substitute any such small and/or emerging local business(s) subconsultant without prior written approval from the County. Said requests to substitute shall be submitted in writing to the District's contract representative identified under Item #17 above. Consultant will not be able to substitute the subconsultant without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC). Further approval from the Board of Supervisors may also be required.
- e. If subconsultants are added to the contract, all SLEB participation, except for prime Consultant, must be tracked and monitored utilizing the Elation compliance System (see Appendix E). SLEB prime Consultant with SLEB subconsultants must enter payments made to subconsultants in the Elation System and ensure that SLEB subconsultants confirm payments received.

Consultant shall meet the requirements above within 15 business days of the County notifying Contractor that it is no longer in compliance with the program. District will be under no obligation to pay Consultant for the percent committed to a SLEB subconsultant if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via e-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

## 22. First Source Program

- 22.1 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.

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

- 23.1 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 (as defined below) or veteran's status. 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.

## 24. Drug-Free Workplace Policy

- 24.1 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.

24.2 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.

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

25.1 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.

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

- 26.1 (a) By signing this AGREEMENT and Appendix D, Debarment and Suspension Certification, CONSULTANT 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.

## **27. Disputes**

27.1 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 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.

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 County, 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 be currently registered to perform public work. 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 of 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 two hundred dollars (\$200.00) 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.
- 33.12.2.4 This provision applies to all classifications, including truckers.

If the Prime Consultant is not a County Certified SLEB, the consultant shall be required to utilize the Elation compliance system for submittal of certified payrolls to the Department of Industrial Relations.

- 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 one hundred dollars (\$100.00) 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 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.
- 33.14 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.
- 33.15 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.
  - 33.15.1 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.
  - 33.15.2 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.
  - 33.15.3 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.
  - 33.15.4 CONSULTANT shall recruit vigorously and encourage minority-and women-owned businesses to bid its subcontracts.
  - 33.15.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
  - 33.15.6 The CONSULTANT shall include the provisions set forth in Sections 33.15.1 through 33.15.5 in each of its subcontracts.
  - 33.15.7 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.
- 33.16 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
  - 33.16.1 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.

33.16.2 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

33.17 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:

33.17.1 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.

33.17.2 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.

33.17.3 Terminate the contract and collect appropriate damages from the CONSULTANT.

33.17.4 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**

By:   
NATE MILEY, PRESIDENT  
BOARD OF SUPERVISORS

Date: 1/7/25


“CONSULTANT”

**Convey, Inc.**

By:   
SYBIL HATCH  
PRINCIPAL

Date: 12/9/2024 | 4:38 PM MST

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

By:   
Martin de los Angeles  
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 STANDARD AGREEMENT \*\*\*

## APPENDIX A

### SERVICES TO BE PROVIDED BY CONSULTANT

1. This is an appendix attached to, and made a part of the Agreement dated \_\_\_\_ of \_\_\_\_\_, 2025, between the Alameda County Flood Control and Water Conservation District (“DISTRICT”) and Convey, Inc. (“CONSULTANT”), providing for On-call Strategic and Technical Support Services.

1.1 This Appendix A has been drafted to include the requirements contained in the Request for Proposal/Quotation (RFP/Q) No. FLO202409109, including the proposal response of CONSULTANT (Response), and additional services that the DISTRICT obtained through negotiations, if any. In the event of any conflict (direct or indirect) among any of the exhibits, the RFP/Q and the Response, the more stringent requirements providing the DISTRICT with the broader scope of services shall have precedence, such that this Appendix A including all attachments, the scope of work described in the RFP/Q and the scope of work described in CONSULTANT’s proposal shall be performed to the greatest extent feasible.

All work and materials shall meet the standards and requirements of all applicable Federal, State, and local government laws and the regulations and guidelines and shall also comply with the prevailing standards and practices of the profession. Specific work requirements, time frames for completion, and approximate total cost or “not to exceed” cost shall be mutually agreed upon by CONSULTANT and DISTRICT in writing prior to commencement of each task. Payment shall be in accordance with Appendix B.

1.2 Approved Consultant Team - Key Personnel & Subconsultants:

**Convey, Inc. (Prime - SLEB)**

Sybil Hatch, P.E., Principal

Rachel Ross, Project Manager

Susie Grant, Senior Graphic Designer

Chris Kay, Grant Writer

Rosilena Tarver, Writer

Hugo Rodrigues, Web Developer

Daniel O’Sullivan, Outreach Specialist

Kevin Jones, Video Producer and Photographer

**Harris and Associates (Sub-consultant)**

Tamora Bryant, P.E., finance Strategist

**EMC Research, Inc. (Sub-consultant - SLEB)**

Sara Labatt, Polling

**Wood Rodgers, Inc. (Sub-consultant)**

Dan Matthies, Principal Civil Engineer

### 1.3 Scope of Project

Refer to Appendix A-1 attached hereto.

### 1.4 Consultant's Milestone Schedule and Deliverables

The Milestone Schedule shall be in accordance with Appendix A-1 attached hereto. The deliverables shall be as specified in Appendix 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 performed 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, 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 Appendix 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, 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 herein, 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 herein. 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 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 disciplines and subconsultants involved in completing the Project. 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-coordination.
- 2.3.2 Consultant shall provide appropriate training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate procedures for work. 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 Consultant's proposed scope of work annexed as Appendix 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. (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.

END OF APPENDIX A



## APPENDIX A-1 – SCOPE OF SERVICES

### ***Alameda County Flood Control and Water Conservation District STRATEGIC AND TECHNICAL SUPPORT SERVICES***

The Convey team will perform the following activities as requested by Alameda County Flood Control and Water Conservation District (“District”) staff to support the District’s mission of providing flood protection for Alameda County residents and businesses.

#### ***Task 1: Project Management***

***Task 1.1:*** At the outset of the contract, prepare for and conduct a kick-off meeting with District staff to discuss District goals and priorities.

***Task 1.2:*** Prepare and update a master schedule of all tasks, including interim and final milestones; prepare for and attend regular progress meetings with District staff and others, including developing agendas, presentation materials (as needed), and minutes (as requested); prepare monthly invoices and progress reports.

#### ***Task 2: Prepare Publications/Reports***

***Task 2.1:*** Prepare the District’s annual reports. Work will include developing one or two mock-up graphical formats; gathering information and developing an outline; taking photographs as needed; preparing content and a draft in layout format; incorporating District comments and finalizing the report. Assist in preparing the District’s requisite Benefit Assessment Program Annual Engineer’s Report for submittal to the Board of Supervisors.

***Task 2.2:*** At District request, update the District’s Hydrology & Hydraulics Manual as new information or methodologies become available. Prepare other guidelines or manuals as requested by District staff to support District operations.

***Task 2.3:*** Support District staff and initiatives by preparing informational materials and white papers. Prepare informational materials to support District communications efforts, which could include presentation slide decks, handouts, press releases, and/or articles about District projects and initiatives. Work with District staff to prepare infographics, animations, simplified maps, and other digital assets to support District communications efforts.

#### ***Task 3: Digital Services***

***Task 3.1:*** Perform website upgrades on an as-needed basis to provide access by the public to information about the District. The work associated with website upgrades may include modifying the site information architecture, developing content and graphics, programming, and testing new web pages. It may also consist of developing web applications for accessing drainage master plan data depiction. Convey will incorporate District staff comments before making the web pages live.

***Task 3.2:*** Take video footage (ground and drone) and photographs of District facilities, projects, and staff.

#### ***Task 4: Outreach Activities***

***Task 4.1:*** Research key issues and draft correspondence on behalf of District staff. Enhance awareness of the District and its projects within the communities it serves, through coordinated

## APPENDIX A-1 – SCOPE OF SERVICES

communications, presentations, and informational materials.

**Task 4.2:** Assist District staff in preparing award nominations for various “project of the year” and/or “manager of the year” awards from American Public Works Association, American Society of Civil Engineers, Floodplain Management Association, and/or other awards as appropriate.

### ***Task 5: Strategic and Technical Support***

**Task 5.1:** Support the District in identifying and preparing grant applications for federal, state, and local grants to provide funding for District projects and programs. Assist the District in strategizing multi-partner, multi-use and multi-benefit projects that can leverage potential grant opportunities and/or reduce overall District project costs through the shared cost of combined uses of District facilities.

**Task 5.2:** Perform technical peer review of reports associated with watershed planning studies and engineering project designs, as requested by District staff.

**Task 5.3:** Assist District staff in preparing and implementing goods and professional services procurement packages, including RFQ/RFP, evaluation forms, Board letters, and procurement documentation and close-out. Convey will accordingly be precluded from competing on these procurements.

**Task 5.4:** Serve as a facilitator and convener to assist District staff in collaborating with professional associates in peer agencies, to support District strategic initiatives.

## APPENDIX B

## PAYMENTS TERMS

This is an appendix attached to, and made a part of the Agreement dated \_\_\_\_\_, 2025, between the Alameda County Flood Control and Water Conservation District (“District”) and Convey, 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 One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) 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. 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 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 Services. The District shall pay Consultant for Services, as defined below, as follows:
  - 3.2.1 General. For 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 Services of Subconsultants employed by Consultant to render Services, the amount billed to Consultant therefor.

3.2.3 For 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 "Services" shall mean as defined within the "Scope of Services" defined in this agreement.
5. 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 Appendix B-1. The 2025 Fee Schedule Rates (Appendix B-1) shall remain constant through December 31, 2025, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason. After December 31, 2025, the consultant may propose fee adjustments during subsequent year(s) of the Agreement period due to normal salary increases but the amount the rates are adjusted in any given year shall not exceed three percent (3%). Upon review of the request of fee adjustments and acceptance by the District, it shall become a part of this Agreement and remain in full force and effect.
6. The markup cost for material and services required for the Project shall not exceed ten percent of the original cost (10%).
7. This Appendix supersedes any contrary language in the attached Fee Schedule Rates (Appendix B-1).

END OF APPENDIX B

Appendix B-1



Alameda County Flood Control and Water Conservation District  
Attn: Anita Franklin  
399 Elmhurst Street, Room 113  
Hayward, CA 94544

November 25, 2024

RE: RFQ/P No. FLO202409109  
Strategic and Technical Support Services

Dear Ms. Franklin,

As requested, we have prepared Convey's fee schedule by classification for this contract. These hourly billing rates will be effective as of January 1, 2025.

Classification (Labor Category)	2025 Billing Rate
Senior Advisor	\$412
Principal	\$362
Senior Project Manager	\$285
Project Manager	\$226
Senior Graphic Designer	\$263
Graphic Designer	\$226
Senior Behavioral Science Specialist	\$255
Behavioral Science Specialist	\$210
Grant Writer	\$260
Web Developer	\$221
Senior Outreach Specialist	\$226
Outreach Specialist	\$210
Associate Outreach Specialist	\$179
Senior Content Writer	\$197
Content Writer	\$152
Video Producer & Photographer	\$195
Contract Administrator	\$244
Administrative Assistant	\$122

Billing rates are subject to annual escalation following each calendar year. Reimbursable expenses will be invoiced at cost plus 10%.

Sincerely,

A handwritten signature in black ink that reads "Sybil Hatch".

Sybil Hatch, P.E.  
Principal



**Harris & Associates.**

November 25, 2024

Sybil Hatch, PE  
President  
Convey, Inc.  
1250 45<sup>th</sup> Street, Suite 250  
Emeryville, CA 94608

**Subject: On-Call Strategic Professional and Technical Support Services for Alameda County Flood Control and Water Conservation District**

Harris & Associates is pleased to be included as part of the Convey team in responding to the County's Request for Proposals No. FLO202409109. Our current schedule of Hourly Rates is shown below:

Harris Position	2025 Billing Rates*
Vice President	\$310
Director	\$285
Senior Consultant	\$300
Assessment Engineer	\$265
Senior Project Manager	\$265
Project Manager	\$215
Deputy Project Manager	\$185
Senior Project Engineer	\$220
Project Engineer	\$185
Senior Project Analyst	\$170
Project Analyst	\$155
Technical Support	\$145
Administration	\$125

\*The rates are subject to annual adjustments on January 1st of each year not to exceed 3%

Allowed reimbursable expenses will be invoiced at cost plus 10%.

Sincerely,  
**Harris & Associates, Inc.**

**Alison Bouley, PE**  
Vice President, Municipal & District Finance  
949.536.2513 ■ [Alison.Bouley@WeAreHarris.com](mailto:Alison.Bouley@WeAreHarris.com)

**Tamorah Bryant, PE**  
Senior Project Manager  
916.562.2220 ■ [Tamorah.Bryant@WeAreHarris.com](mailto:Tamorah.Bryant@WeAreHarris.com)



## WOOD RODGERS

### OAKLAND FEE SCHEDULE

CLASSIFICATION	STANDARD RATE
Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$360
Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$315
Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$295
Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$285
Project Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$265
Project Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$250
Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$240
Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$230
Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*	\$200
Designer	\$105
Senior CAD Technician/Graphics Designer II	\$220
Senior CAD Technician/Graphics Designer I	\$205
CAD Technician/Graphics Designer	\$180
Project Coordinator	\$190
Administrative Assistant	\$170
Construction Manager	\$360
1 Person Survey Crew	\$260
2 Person Survey Crew	\$370
3 Person Survey Crew	\$470
Consultants, Outside Services, Materials & Direct Charges	Cost Plus 10%
Overtime Work, Expert Witness Testimony and Preparation	Rate Plus 50%

\*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 67 cents per mile.

Fee Schedule subject to change January 1, 2026.

**Cost Proposal and Fees**

At EMC, our typical practice is to provide clients with up-front, not-to-exceed costs for our research projects. We find this allows our clients to better plan their budgets and projects without being surprised by new fees or charges down the road.

While EMC provides all-inclusive, not-to-exceed fees rather than billing hourly, we've included individual billing rates below in response to the RFI.

Title	Project role	Hourly rate
Sara LaBatt; Senior Principal	Lead account manager	\$225
Senior Director/Director	Project director	\$190
Strategy Associate	Analyst	\$150
Data Associate	Analyst	\$160
Field Associate	Vendor manager	\$135

Because we typically bill on a lump sum basis and our project fees are inclusive of all services and deliverables related to each project, below we are also providing a sample project cost.

The cost of a survey is determined by many factors, particularly the mode of interviews, length of the questionnaire, the screens employed, languages needed, and the number of interviews completed. EMC is committed to providing competitive pricing for our clients and we are happy to discuss our proposed research approach as well as other methodological options that would provide useful, actionable data within your budget. The sample cost is for general information purposes only and the fee for each project will be determined based on specifications once research issuing from this RFI is commissioned.

In additional to all aspects of conducting the survey, the proposed cost includes reasonable consulting and presentation of results. This is our start to finish, all-inclusive cost for all services and deliverables outlined.

Project type	Languages included	# of interviews	Length	Cost
Mixed-Mode Telephone/Email- and Text-to-Web Survey	English, Spanish	600	15 min	\$57,800
			18 min	\$63,800





## APPENDIX C

### MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> As required by State of California	WC: Statutory Limits EL: No less than \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<b>Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability and defense and indemnification of the District	\$1,000,000 per occurrence \$2,000,000 project aggregate

**E** **Endorsements and Conditions:**

1. **ADDITIONAL INSURED:** Alameda County Flood Control & Water Conservation District, the County of Alameda, their Boards of Supervisors, the individual members thereof, and all officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the District.
2. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
3. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the District, the County, their officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the District, the County, their officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.
4. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the District. Acceptance of Contractor's insurance by District shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or District.
5. **SUBCONTRACTORS:** Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit.
6. **JOINT VENTURES:** If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
  - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
  - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".
7. **CANCELLATION OF INSURANCE:** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the District in accordance with policy terms and conditions.
8. **CERTIFICATE OF INSURANCE:** Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to District, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### Appendix D

## COUNTY OF ALAMEDA

### DEBARMENT AND SUSPENSION CERTIFICATION For Procurements Over \$25,000

The Consultant, under penalty of perjury, certifies that, except as noted below, Consultant, its Principals, and any named and unnamed subconsultants/subcontractors:

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

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

CONSULTANT: Convey, Inc.

PRINCIPAL: Sybil Hatch TITLE: Principal

SIGNATURE:  DATE: 12/9/2024 | 4:38 PM MST

END OF APPENDIX D

## **APPENDIX E**

### **COUNTY OF ALAMEDA CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

The County of Alameda utilizes Elation Systems, a third-party compliance system to monitor subcontractor utilization requirements.

County project managers will provide a special access code to contractors and subcontractors participating in this contract to allow them to register to use Elation Systems (at <https://www.elationsys.com/APP/>) free of charge.

Upon receipt of signed contract documents, the prime contractor shall immediately enter subcontractors (contributing towards utilization requirements) in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

Elation Systems support, resources, and assistance are available online to registered contractors awarded a contract as a result of this bid process for this project and participating registered subcontractors.

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

END OF APPENDIX E

### Appendix F

## IRAN CONTRACTING ACT COMPLIANCE CERTIFICATE (for contracts of \$1,000,000 or more)

# COUNTY OF ALAMEDA

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

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

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

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

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

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FIRM NAME: Convey, Inc.

PRINCIPAL: Sybil Hatch TITLE: Principal

SIGNATURE:  DATE: 12/9/2024 | 4:38 PM MST

DocuSigned by:  
Sybil Hatch  
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END OF APPENDIX F