

# PROFESSIONAL SERVICES AGREEMENT

## AGREEMENT

This Agreement is made and entered into this [redacted] day of [redacted], ("Effective Date") by and between the Town of Moraga ("Town"), and [redacted name/address], a [redacted], ("Design Professional "). Town and Design Professional shall be sometimes collectively referred to as "Parties"

## RECITALS

**WHEREAS**, Town has determined that it requires the following professional services from a design professional to [redacted]; and

**WHEREAS**, Design Professional represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Design Professional further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

**WHEREAS**, the services that Design Professional agrees to provide will be funded in whole or in part through the following grant funding for the Project:

California Natural Resources Agency (CNRA), California River Parkways Grant Program Agreement (No. R61504-0). The CNRA Grant Agreement with the Town is dated [ADD DATE] and is incorporated by reference herein.

WHEREAS, the Design Professional has represented that it has specialized skill and expertise in the area of grant funding and is knowledgeable of the CNRA Grant requirements.

**WHEREAS**, the City Council of the Town of Moraga on [redacted], by Resolution No. [redacted] authorized execution of this Agreement on behalf of the Town in accordance with the Town Municipal Code and/or other applicable law;

**NOW, THEREFORE**, Town and Design Professional, for the consideration hereinafter described, mutually agree as follows:

### 1. RECITALS

The Parties agree that the foregoing recitals are true and correct and are hereby incorporated as terms of the Agreement.

## 2. DESCRIPTION OF SERVICES OR SCOPE OF SERVICES

The services to be performed under this Agreement (“Services”) are as follows:

[REDACTED]. The Services are further described in the Scope of Services, which is attached to and hereinafter incorporated by reference as Exhibit A.

a. As part of the Services, Design Professional shall certify that the Project as designed and permitted shall comply with all current laws and regulations which apply to the Project, including, but not limited to, legal requirements for construction contracts, building codes, environmental laws, health and safety codes, and disabled access laws. Design Professional shall certify that, prior to commencement of construction, all applicable permits and licenses will have been obtained.

b. Prior to the commencement of any work, Design Professional agrees to submit in writing to the Town for subsequent submittal to Grant Agencies for prior approval any request for modification or deviation from the original Project Scope per the Grant Agencies’ Grant Agreement with the Town. Changes in Project Scope for those project elements funded through the Grant Agencies’ funding shall continue to meet the need cited in the original Grant application. Any modification or alteration in the Project as set forth in the Grant Applications on file with the Grant Agencies must be submitted to Grant Agencies’ for approval. Any modification or alteration in the Project must also comply with all current laws and regulations, including but not limited to CEQA.

Design Professional shall provide appropriate supporting documentation to justify said amendment requests when related to Design Professional services. Design Professional shall provide documentation in a timely manner and at least ten (10) days prior to the Town submitting any amendment request. The Town must submit amendment requests to grant funding agencies in a timely manner as described in the grant agreements.

## 3. TERM

The Agreement term will commence on [REDACTED] and expire on [REDACTED] unless the term of the Agreement is amended or the Agreement is terminated in accordance with its terms.

## 4. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

a. Town agrees to pay Design Professional for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Design Professional invoices must be submitted not more often than monthly to the Town and list the Services performed and the amounts to be paid according to the cost categories and prices in Exhibit B, which is attached hereto and hereinafter incorporated by reference. In no event will the Town’s obligation to pay the Design Professional under this Agreement exceed \$ [REDACTED] (the “Not to Exceed Amount”), unless this Agreement is first modified in accordance with its terms.

b. Where the Proposal provides for compensation on a time and materials basis, Design Professional must maintain adequate records to permit inspection and audit of Design Professional's time and material charges under this Agreement. Design Professional will make such records available to the Town during normal business hours upon reasonable notice. If the Not to Exceed Amount is greater than \$10,000, then in accordance with California Government Code § 8546.7, this Agreement shall be subject to the examination and audit of the California State Auditor, at the request of the Town or as part of any audit of the Town, for a period of three years after final payment.

c. Payment Documentation:

(1) Each payment request must also include proof of payment such as receipts, paid invoices, canceled checks or other forms of documentation demonstrating payment has been made.

(2) Any payment request that is submitted without the required itemization and documentation will not be authorized.

(3) Grant funds have a limited period in which they must be expended. CONSULTANT expenditures funded by the Grant Agreement shall occur within the time frame of the Project Performance Period as indicated in Grant Agreement.

d. CONSULTANT shall promptly submit documentation to the TOWN such that the TOWN may provide a report to the grantor, pursuant to the Grant Agreement requirements, showing total final Project expenditures with the final payment request and required closing documents.

## 5. TIME OF COMPLETION

Design Professional must commence performance of the Services upon receipt of written direction to proceed from Town. Design Professional shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Design Professional's obligations hereunder. Design Professional will complete the Services in accordance with this Agreement by [REDACTED] (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

## 6. INDEPENDENT CONTRACTOR

Design Professional and Town agree that the Design Professional will perform the Services as an independent contractor and not as an employee or agent of the Town. Persons employed or utilized by Design Professional in the performance of the Services will not be employees or agents of the Town and in the performance of the Design Professional's Services, Town shall have no control over the method or means of DESIGN PROFESSIONAL'S performance of the Services. Design Professional is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

## 7. SUBCONTRACTING

Design Professional may subcontract portions of the Services upon the prior written approval of the Town. Design Professional will be solely responsible for payment of such subcontract Services. No contractual relationship will exist between any such subcontractors of the Design Professional and the Town.

Subcontractor agrees to be bound to Design Professional and Town in the same manner and to the same extent as Design Professional is bound to Town under the Agreement. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work.

## 8. STANDARD OF PERFORMANCE

a. Design Professional shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Design Professional is engaged, in the same or similar geographical area in which Design Professional practices its profession, and will prepare all work products required by this Agreement in accordance with such standards.

b. Design Professional shall comply with federal, state and local laws and regulations applicable to performance of the Services, including but not limited to, the California Building Standards Code as in effect in the Town, the Americans with Disabilities Act, health and safety codes, any air or water pollution control laws and regulations applicable to Design Professional, applicable prevailing wage laws, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the services. Design Professional's failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

c. Design Professional shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Town, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Design Professional shall, immediately upon receiving notice from Town of such desire of Town, reassign such person or persons.

## 9. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Design Professional and any subcontractors shall comply with all applicable rules and regulations to which Town is bound by the terms of such fiscal assistance program, including, but not limited to, those special provisions attached hereto and hereinafter incorporated by reference as Exhibit C, and any other requirements which may be required as a condition of grant funding for the Project.

## 10. GRANT REIMBURSEMENT

If requested by Town, Design Professional shall provide all invoices and other support documentation necessary to evidence the compensation relating to the Services as necessary to support reimbursement from grants, loans or other outside sources that are in part or whole funding the Project. Invoices and documents shall be provided in a format and form of content acceptable to the Town. The Town may seek recovery of compensation paid to Design Professional for Services if Design Professional cannot provide all invoices and documentation necessary to support the Services provided for which the Design Professional was compensated by the Town.

## 11. INDEMNITY

To the maximum extent permitted by law, Design Professional shall, at its own expense, indemnify, defend with counsel acceptable to the Town, (which acceptance will not be unreasonably withheld), and hold harmless Town and its officers, officials, employees, agents and volunteers and the granting agency identified in the Grant Agreement ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Design Professional 's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

If Design Professional is a "design professional," as defined in California Civil Code Section 2782.8(c), Design Professional shall indemnify, defend, and hold the Indemnitees harmless against Liability only to the extent such Liability arises out of, pertains to, or relates to Design Professional's negligence, recklessness, or willful misconduct. In such an event, the cost to defend charged to Design Professional shall not exceed Design Professional's proportionate percentage of fault.

The Design Professional 's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Design Professional 's inability to evaluate Liability, or because the Design Professional evaluates Liability and determines that the Design Professional is not or may not be liable. The Design Professional must respond within 30 calendar days to any tender for defense and indemnity by the Town, unless the time for responding is extended by an authorized representative of the Town in writing. If the Design Professional fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Design Professional under this Agreement as shall reasonably be considered necessary by the Town, may be retained by the Town until disposition has been made of the matter subject to tender, or until the Design Professional accepts the tender, whichever occurs first.

The Design Professional waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Design Professional arising out of or in connection with the Services or Design Professional 's failure to comply with any of the terms of this Agreement .

## 12. INSURANCE

a. Minimum Scope of Insurance. Design Professional agrees to have and maintain, for the duration of this Agreement the following minimum levels of insurance coverage:

(1) General Liability insurance policy insuring it and its firm to an amount not less than \$5,000,000 (Five Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Design Professional agrees to have and maintain for the duration of this Agreement an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Design Professional shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Design Professional's operations under this Agreement, whether such operations by Design Professional or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$2,000,000 (Two Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Design Professional:

- (a) This policy shall provide coverage for Workers' Compensation as required by state or federal law.
- (b) This policy shall also provide required coverage for Employers' Liability.
- (c) Contractor hereby agrees to waive all rights of subrogation against the Town, its elected and appointed officers, officials, employees, agents, and subcontractors, which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Town for all work performed by the Contractor, its employees, agents, and subcontractors.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) “The Town of Moraga, its elected or appointed officials, officers, agents, departments, representatives and employees are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured.”

(b) “This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self- insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it.”

(c) “This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.”

(6) Design Professional shall provide to the Town all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with the Town on or before commencement of performance of this Agreement. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees, or volunteers.

(8) Design Professional’s insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer’s liability.

(9) All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30 days’ prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall always be kept on file with the Town Manager during the term of this Agreement.

(10) Acceptability of Insurers. Insurance is to be placed with insurers with a Best’s rating of no less than A:VII.

(11) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town’s option, Design Professional shall demonstrate financial capability for payment of such deductibles or self- insured retentions.

(12) Assignment Prohibited. Neither the Town nor Design Professional may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

### 13. LICENSES & PERMITS

a. Business License. Before the Town will issue a notice to proceed with the Services, Design Professional and any subcontractors must acquire, at their expense, a business license from the Town in accordance with Title 3, Chapter 1 of the Town Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. Other Licenses and Permits. Design Professional represents and warrants to Town that Design Professional and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

### 14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Design Professional pursuant to this Agreement shall be and remain the property of the Town. Any modification or reuse of such documents by the Town without Design Professional's prior written consent will be at the Town's sole risk. Except as may be otherwise required by law, Design Professional will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of Town.

### 15. TERMINATION AND REMEDIES

a. Town may terminate this Agreement for convenience by giving at least 10 days written notice to Design Professional specifying the termination effective date. Upon receipt of such notice, Design Professional may continue performance of the Services through the date of termination. Town shall pay Design Professional for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Design Professional materially breaches any term of this Agreement, in addition to any other remedies the Town may have at law or equity, the Town may:

(1) Terminate the Agreement by notice to the Design Professional specifying the termination effective date;

(2) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(3) Charge Design Professional, or deduct from monies that may be due or become due the Design Professional under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Design Professional had Design Professional completed the Services in accordance with this Agreement.

## 16. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon Town, Design Professional, and their successors. Except as otherwise provided herein, neither Town nor Design Professional may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

## 17. CONFLICT OF INTEREST PROHIBITION

Town and Design Professional will comply with the requirements of the Town's Conflict of Interest Code adopted pursuant to California Government Code §87300 et seq., the Political Reform Act (California Government Code §81000 et seq.), the regulations promulgated by the Fair Political Practices Commission (Title 2, §18110 et seq. of the California Code of Regulations), California Government Code §1090 et seq., and any other ethics laws applicable to the performance of the Services and/or this Agreement. Design Professional may be required to file with the Town Clerk a completed Form 700 before commencing performance of the Services unless the Town Clerk determines that completion of a Form 700 is not required, pursuant to Town's Conflict of Interest Code. Form 700 forms are available from the Town Clerk.

Design Professional may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Design Professional's obligations pursuant to this Agreement. Design Professional agrees to cooperate fully with Town and to provide any necessary and appropriate information requested by Town or any authorized representative concerning potential conflicts of interest or prohibitions concerning Design Professional's obligations pursuant to this Agreement.

Design Professional may not employ any Town official, officer or employee in the performance of the Services, nor may any official, officer or employee of Town have any financial interest in this Agreement that would violate California Government Code §1090 et seq. Design Professional hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of Town. If Design Professional was an employee, agent, appointee, or official of Town in the previous twelve months, Design Professional warrants that it did not participate in any manner in the forming of this Agreement. Design Professional understands that, if this Agreement is made in violation of Government Code §1090 et seq., the entire Agreement is void and Design Professional will not be entitled to any compensation for Design Professional's performance of the Services, including reimbursement of expenses, and Design Professional will be required to reimburse Town for any sums paid to Design Professional under this Agreement. Design Professional understands that, in addition to the foregoing, penalties for violating Government Code §1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Design Professional of the requirements of this provision will constitute a material breach of this Agreement, and the Town reserves all its rights and remedies at law and equity concerning any such violations.

## 18. MAINTENANCE OF RECORDS

a. Design Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges, expenditures and disbursements for the Services provided to Town for a minimum period of three (3) years, and at least one (1) year following an audit, or for any longer period required by law, from the date of final payment to Design Professional by the Town.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Town Attorney, Town Auditor, Town Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to Town for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Design Professional's address indicated for receipt of notices in this Agreement.

d. Town may, by written request by any of the above-named officers, require that custody of the records be given to Town and that the records and documents be maintained in the Town Manager's office. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

e. Design Professional shall use applicable Generally Accepted Accounting Principles.

f. Design Professional shall maintain an accounting system that:

(1) Accurately reflects fiscal transactions, with the necessary controls and safeguards.

(2) Provides a good audit trail, including original source documents such as purchase orders, receipts, progress payments, invoices, employee paystubs and time cards, evidence of payment, etc.

(3) Provides accounting data so the total cost of each individual project can be readily determined.

g. Design Professional agrees that during regular office hours, with reasonable notice, all of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining work performed under or funded through the Grant Agreement relating to this Project. Design Professional shall maintain and make available for inspection accurate records of all of its costs, disbursements and

receipts with respect to its activities pertaining work performed under or funded through the Grant Agreement.

#### 19. EQUAL EMPLOYMENT OPPORTUNITY

Design Professional and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any person because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age ( 40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Design Professional and subcontractors shall ensure that the evaluation and treatment of all persons, and particularly their employees and applicants for employment are free from such discrimination and harassment. Design Professional and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)-(f), are incorporated into this grant by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). Design Professional shall include this non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the grant.

#### 20. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Contra Costa County.

#### 21. RECOVERY OF ATTORNEYS' FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

#### 22. THIRD PARTIES

Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, a third party against either the Town or Design Professional. Design Professional's Services hereunder are being performed solely for the benefit of Town. Notwithstanding the foregoing, Town shall be an express third-party beneficiary of all contracts between Design Professional and any subcontractors or subconsultants for any services performed in connection with, or in furtherance of, this Agreement.

23. WAIVER

No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by either Town or Design Professional of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other further breach.

24. SEVERABILITY

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

25. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

26. AUTHORITY

Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

27. EXHIBITS

The following exhibits are attached to this Agreement and incorporated herein by this reference:

- Exhibit A: Scope of Services
- Exhibit B: Compensation
- Exhibit C: Grant Requirements

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IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

TOWN OF MORAGA:

By: \_\_\_\_\_  
Cynthia Battenberg, Town Manager

DESIGN PROFESSIONAL:

by: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

By: \_\_\_\_\_  
Marty McInturf, Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michelle Marchetta Kenyon,  
Town Attorney

FUNDING:

By: \_\_\_\_\_  
Norman Veloso,  
Administrative Services Director

**EXHIBIT A**  
**SCOPE OF SERVICES**

EXHIBIT A.  
SCOPE OF SERVICES

- A1. Design Professional shall incorporate posting signage in the plans and specifications that acknowledge the source of the funds pursuant to the State of California - The Natural Resources Agency (CNRA), California River Parkways Grant Program, Grant Guidelines and Application (Application Guidelines). Size, location and number of signs shall be determined by CNRA. Required signage must be in place before Grant Funds for construction will be released.
- A2. Upon completion of detailed Project design, plans and specifications, Design Professional shall provide to the Town of Moraga (Town) revised detailed Project Budget, Project Scope and detailed site plan, which will be provided to CNRA for review and approval. If Project includes habitat restoration or landscaping, Design Professional shall provide a planting palette demonstrating how native, low-water, drought-resistant vegetation will be used in the Project.

Approval by the CNRA and Town of such plans and specifications, or any other approvals provided for in the CNRA Grant Agreement (Agreement No. R61504), shall be for scope of work as described in Exhibit A of the CNRA Grant Agreement. CNRA Approval does not relieve any obligations to design the Project to be constructed and maintained, or any other obligations required under the CNRA Grant Agreement, in accordance with applicable law or any other standards ordinarily applied to such work or activity.

- A3. Town may be required to record Easements or Deed Restrictions, incorporating by reference the CNRA Grant Agreement and giving public notice that the Town received Funds under the CNRA Grant Agreement in order to assist Town in developing the real property and that, in consideration for the receipt of the Grant Funds, the Town has agreed to the terms of the CNRA Grant Agreement.

In as much as Design Professional is required as part of the Scope of Services to conduct land surveys of the real property where the Project is to be constructed, Design Professional shall be responsible for providing all appropriate, accurate documentation, including but not limited to Plat Maps and Easement Descriptions, for the Town to Record any Deed Restrictions. Where Land Surveying is outside of the Scope of Services of this Agreement, this provision is not applicable.

- A4. As conditions precedent to the State's obligation to make any construction funding available pursuant to the CNRA Grant Agreement, Design Professional shall first provide evidence of compliance with CEQA to the Town to be conveyed to CNRA in accordance with the terms of the CNRA Grant Agreement and any subsequent amendments.
- A5. As conditions precedent to the State's obligation to make any construction funding available pursuant to CNRA Grant Agreement, Design Professional shall first provide evidence of tribal consultation to the Town to be conveyed to CNRA in accordance with

the terms of the CNRA Grant Agreement and any subsequent amendments.

- A6. The Design Professional shall design the Project to comply with the California Environmental Quality Act, Division 13 (commencing with section 21000; 14 California Code of Regulations section 15000 et seq. ["CEQA"]). The Design Professional shall prepare and submit the appropriate CEQA documentation in conformance with the requirements of CNRA and the Town. The State of California, acting through its administering agencies and departments, will typically act as a responsible agency for the purposes of CEQA. Grant Funds will not be disbursed before the close of the period for legal challenge under CEQA. To demonstrate compliance, one of the following shall be submitted:
- a. The Negative Declaration or Mitigated Negative Declaration adopted by the lead agency and Initial Study, including a copy of the Environmental Checklist Form located in Appendix G of the CEQA Guidelines and the Notice of Determination filed with the County and with the State Clearinghouse. If the lead agency has adopted a Mitigated Negative Declaration, the applicant must also provide the adopted mitigation monitoring and reporting program\*
  - b. The Final Environmental Impact Report certified and adopted by the lead agency with Initial Study, including a copy of the Environmental Checklist Form located in Appendix G of the CEQA Guidelines, the adopted mitigation monitoring and reporting program, and the Notice of Determination filed with the County and the State Clearinghouse. Please include any State Clearinghouse Responses received by the applicant\*

\* include documentation the State of California Department of Fish and Wildlife CEQA fee was paid or is not applicable.

Pursuant to section 75102 of the Public Resources Code, before the adoption of a Negative Declaration or Environmental Impact Report, the lead agency shall notify the proposed action to a California Native American tribe, which is on the contact list maintained by the Native American Heritage Commission, if that tribe has traditional lands located within the area of the proposed project.

Changes to the scope resulting from CEQA compliance are permitted provided CNRA determines that the project continues to meet all objectives of the River Parkways Grant Program and is consistent with the intent cited in the original Application. If the Project is disapproved on grounds related to the Resource Agency's CEQA determination, Design Professional shall, at the TOWN's discretion, relinquishing any planning/design documents, including all copies, reproductions, and variations resulting from said funding, without a license to use or otherwise retain in any form.

- A7. Design Professional shall design the project to develop the subject property(ies) in a manner consistent with the CNRA Grant Agreement and Application Guidelines to be maintained and operated for a period commensurate with land tenure/site control requirements as described in appendix J of the CNRA Application Guidelines.

- A8. Design Professional's design shall incorporate the proposed restrictions and reservations for an easement, deed restriction, or other CNRA approve mechanism. The final terms and conditions are subject to input, review and approval by CNRA. The State's interest shall be included in any easement, deed restriction, or other.
- A9. Design Professional shall ensure that the project as designed complies with all applicable state and federal laws and regulations, including, but not limited to: CEQA/NEPA, legal requirements for construction, building codes, health and safety codes, state contractor's and other licenses, and disabled access laws. The Design Professional shall support the Town in obtaining all applicable permits for the Project.
- A10. Design Professional's design shall not include the use or allow the use of any portion of the real property associated with the CNRA Grant Project for mitigation without the written permission of the State.
- A11. Design Professional's design shall not include the use or allow the use of any portion of the real property associated with the CNRA Grant funded portions of the Project as security for any debt.
- A12. Design Professional shall comply with the provisions of the State Labor Code, including payment of prevailing wages, where applicable, on Projects awarded Environment Enhancement & Mitigation Program Funds by CNRA.
- A13. Design Professional shall certify, if applicable, that the Project complies with any laws and regulations including, but not limited to, legal requirements for building codes, health and safety codes, disabled access laws, environmental laws and, that prior to commencement of construction, and that all applicable licenses and permits have been obtained.
- A14. Design Professional shall work toward the Governor's State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1.
- A15. Design Professional's design shall incorporate public access to Project sites commensurate with the intent of the EBRPD Grant Agreement.
- A16. Design Professional's design shall include posting and maintaining a funding acknowledgement sign at the Project site for three years following receipt of final payment for the Project.
- A17. Design Professional shall prepare and submit regular reports on the status of the project to date that may be utilized by Town to prepare Project Status Reports for EBRPD. The EBRPD may withhold all payments until all Project Status Reports are properly submitted. If payments from EBRPD are withheld due to delayed reporting by Design Professional, commensurate payment from TOWN to Design Professional may be withheld.

A18. Design Professional shall design those portions of the Project funded through the EBRPD Grant to be maintained and operated for a minimum of 25-years after final payment of grant funds.

### **Phase I Activities**

These activities comprise Phase I of the work.

A19. Design Professional shall perform project management services including, but not limited to, the following:

- a. Project Integration Management
- b. Project Scope Management
- c. Project Schedule Management
- d. Project Cost Management
- e. Project Quality Management
- f. Project Resources Management
- g. Project Communications Management
- h. Project Risk Management
- i. Project Procurement Management
- j. Project Stakeholder Management

Design Professional shall meet with the Town on a regular basis according to a Project Communications Plan and shall provide Scope, Schedule, and Budget baselines to be tracked and updated continuously throughout the project. Project management processes shall include: Initiation; Planning; Executing; Monitoring & Controlling; and Closing. The Consultant shall identify the Project Manager who shall be the primary contact for the Town.

A20. Design Professional shall perform all necessary field investigations to assess the existing conditions at the Project site and gather necessary information to support the design, permitting, and CEQA/NEPA Clearance processes. This task includes, but is not limited to:

- a. Attend initial kickoff meeting, discuss optional features and needs, and seek feedback regarding design expectations and objectives.
- b. Identify sources of available site and project related information. Request and gather available information for various available sources, and the Town.

- c. Conduct field investigations and site assessments to determine existing conditions and information necessary for design, including, biological assessments, geotechnical investigations, land surveying and topographic surveys, review of previous studies and information. Perform visual inspections and document any additional changes and/or deficiencies of the current condition of the structure and channel reach.
- d. Survey the creek and adjacent features to obtain topographic survey data, including accurately locating building and facilities features. Establish project control monumentation for the survey and future construction surveys. Project control monuments shall be established in stable locations to remain throughout and after construction. Surveys shall conform to the California Department of Transportation Surveys Manual, and the Federal Geographic Data Committee, Geospatial Positioning Accuracy Standards, where applicable. Local survey accuracy shall be no worse than 0.07 ft. Land surveys shall use NAD83 horizontal and NAVD88 vertical datum. Surveys shall clearly identify and delineate existing surface topography, buildings, facilities, structures, pavement, utilities, significant trees and other features that are visible from the surface. Survey information in the creek may involve measurement underwater, depending on seasonal conditions. Surveys of utilities may require accessing through manholes to measure to inverts and verify pipe sizes and locations.
- e. Prepare a topographic map of the project site to the extent necessary to support the project needs, within at least 100 feet either side of the creek and 400 feet upstream and 200 feet downstream of the proposed project construction limits. Identify and include all buildings, facilities and structures in the topographic survey map.
- f. Prepare a geotechnical investigation report for the Project, and any other technical reports to support the design, LOMR or CEQA/NEPA clearance processes. The geotechnical investigation report shall include recommendations regarding slope stabilizations and protections, foundations for structures, and methods for protecting the adjacent building structures from damage related to earthwork activities or structures during and after construction.
- g. Determine and investigate any other parameters necessary for a robust design that protects existing facilities from flood damage or damages related to this project.

A21. Design Professional shall conduct all activities necessary to evaluate hydraulic conditions and revise the flood map classification for the surrounding facilities as follows:

- a. Prepare a hydraulic study to evaluate existing and post-construction conditions for the various options (see subsection 5a below), to support the design process, and to support CEQA/NEPA clearance processes.
- b. Coordinate with FEMA and prepare necessary documentation to augment FEMA Flood Insurance Rate Maps, including Preparation of the Letter of Map Revision

(LOMR) and supporting documentation to revise the Flood Insurance Rate Map, as appropriate.

The appropriate design flow parameters to provide 100-year protection for the facilities adjacent the creek at the Hacienda de las Flores shall be explained and determined as part of the hydraulic study. The hydraulic study shall determine probable flood elevations, base flood elevation, scour potential, and any other parameters needed to support the design, CEQA/NEPA clearance or LOMR. The hydraulic study shall evaluate conditions at least 400 feet upstream and 200 feet downstream of the proposed project construction limits. All hydraulic models shall be submitted to the Town electronically in a format that can be run in non-proprietary hydraulic software, such as HEC-RAS or SWMM.

- A22. Design Professional shall submit the LOMR application and pay the LOMR application fee. This task is strictly for the reimbursement of cost for the application fee. All cost for preparation of the LOMR, application and supporting documents are to be incurred under the task for field investigations (A.20 above).
- A23. Design Professional shall perform all activities necessary to evaluate biological resources and prepare a biological resources study of the Project site. This task may include conducting biological resources surveys and analysis, as well as, preparing a report to support CEQA/NEPA clearance and resource agency permit applications for the Project.
- A24. Design Professional shall prepare a Conceptual Design as follows:
- a. Design Professional shall prepare and deliver to the Town preliminary conceptual design options and issues (15% Design) for staff consideration, discussion and feedback. Design Professional shall meet with staff to discuss design issues and options, including aesthetic, habitat, hydrologic, engineering, architectural and other design considerations. This may be a remote teleconference meeting with Town staff. Discussion should inform options for incorporation in a public Workshop presentation. Design Professional shall document feedback.
  - b. Design Professional shall attend and present the conceptual design options and issues at a public Workshop, and receive comments and feedback. Design Professional shall document all public comments and prepare a summary and for presentation to the Town Council. Document comments and feedback for consideration in the design. Under the current COVID19 protocols the format of a public workshop may need to be modified to afford the public an opportunity to provide feedback and comments, but still provide adequate safety. Other opportunities, including online options, shall be considered.
  - c. Design Professional shall assist staff in preparing a presentation regarding the concept design options, feedback documented from the Workshop, and any initial comments/findings related to the project or workshop. At the Town's

discretion, the Consultant shall attend a Town Council meeting to support staff, answer questions, and receive comments.

- A25. Upon receiving feedback from Town staff, the Workshop and Town Council, Design Professional shall prepare a 30% design stage Plans as follows:
- a. Design Professional shall initiate correspondence with the jurisdictions/agencies with potential infrastructural conflicts involved in this project, such as utilities like CCCSD, to resolve any conflicts between the comments of different reviewers.
  - b. Design Professional shall prepare Plans, Specifications and Engineer's Estimates (PS&Es). The 30% PS&Es shall at a minimum include plans, profiles, some preliminary detail drawings, outline/TOC of specifications, preliminary specifications, and an engineer's estimate of probable cost.
  - c. At this stage, Design Professional shall prepare and deliver Draft PS&Es (30% design), including plans, profiles, some preliminary detail drawings, outline/TOC of specifications, preliminary specifications, and an engineer's estimate of probable cost. The design shall incorporate bioengineering and habitat improvements in conformance with the grants and suitable for the conditions, native environment, and native species indigenous to the area, such as those for California red-legged frog.
  - d. Design Professional shall document comments received from 15% public and Town Council meetings, and shall incorporated comments into plans and technical specifications in an appropriate manner or document reasoning for excluding. The Plans and Profiles shall be nearly completed pending review and any minor modifications derived from subsequent design activities.
  - e. The 30% Design set shall be clearly marked as "Draft 30% Design" on each sheet in the footers, or in text boxes if in the drawing frames. Clearly mark dates in footers and text boxes to match new date of issuance of the 30% Design set. All design files shall be in AutoCAD, and technical specifications shall be in the Caltrans format. All drawings elements, including lines, fonts and scales, shall be sized appropriately to be clearly visible and properly utilized on half-sized drawing sheets. Deliverables shall be published and submitted as bound hard copies (5 sets, half-sized for plans) and an electronic copy in Portable Document Format (PDF). Additionally, all AutoCAD drawings shall be submitted as ETRANSMIT files, including all external references, images, line weights and other associated files. MS Word documents for specifications shall be delivered to the Town. Deliverables to other agencies shall conform to their requirements. Copies of all documents submitted to other agencies shall be submitted to the Town.
  - f. Design Professional shall assist staff in preparing a presentation of the 30% design and incorporation of comments from the prior workshop and council meeting. At the Town's discretion, the Consultant shall attend a Town Council

meeting to support staff, answer questions, and receive comments.

A26. Design Professional shall be responsible for conducting all necessary environmental analyses and preparing the environmental documents for CEQA and NEPA compliance as follows:

- a. The CEQA documents and studies shall be prepared to be compatible with usage in FEMA's NEPA process. Additionally, to support the CEQA clearance process, Design Professional shall deliver the Administration Draft and Notice of Intent to the Town, other permitting agencies and SCH for State Agencies' review, payment of associated fees related to the application and review processes (not mitigation fees), assist in preparing advertisement for 30-day Public Comment, establish process and receive Public Comments, attending Public Hearing at City Council Meeting, delivery of final CEQA documents with comments addressed/incorporated, and Assist Town in filing NOD, as appropriate.
- b. Design Professional shall support FEMA's NEPA clearance process by providing the appropriate environmental studies and documentation necessary. FEMA will be responsible for NEPA compliance; however, Design Professional will be expected to support FEMA's Environmental and Historic Preservation team's NEPA findings.

A27. Upon receiving feedback from Town Council and staff, Design Professional shall prepare a 65% design stage PS&Es as follows:

- a. The 65% PS&Es shall at a minimum include plans, profiles, details developed to a state of near completeness pending review and any minor modifications derived from subsequent design activities. Additionally, the 65% PS&Es shall include at least some preliminary specifications, draft front-end contract and bidding documents, and engineer's estimate of probable cost.
- b. Design Professional shall document comments incorporate comments from 30% Conceptual Design review into Plans and Profile drawings in an appropriate manner or document reasoning for excluding. Based on comments received on the Conceptual (30%) Design, Design Professional will advance the Project design to the point that all major design and construction issues are resolved and solutions are represented in the plan documents. The Plans, Profiles and Details shall be nearly completed pending Town and Agencies review comments, and any minor modifications derived from subsequent design activities. The engineer's estimate shall be updated to reflect the refinements from the Conceptual Design to the 65% PS&E submittal. A draft of the technical specifications sections shall be included in the submittal. Design Professional will update the technical details to conform with Town standards.
- c. The 65% Design set shall be clearly marked as "Draft 65% Design" on each sheet in the footers, or in text boxes if in the drawing frames. Clearly mark dates

in footers and text boxes to match new date of issuance of the 65% Design set. All design files shall be in AutoCAD, and technical specifications shall be in the Caltrans format. Deliverables shall be published and submitted as bound hard copies (5 sets, half-sized for plans) and an electronic copy in Portable Document Format (PDF). Additionally, all AutoCAD drawings shall be submitted as ETRANSMIT files including all external references, images, line weights and other associated files. MS Word documents for specifications shall be delivered to the Town. Deliverables to other agencies shall conform to their requirements.

## Phase 2

These activities comprise Phase II of the work and are to be performed following completion of NEPA and authorization by the Grant Funding Agencies.

A28. Design Professional shall coordinate with all appropriate resource agencies to obtain permits for the Project. Design Professional shall complete permitting process for all applicable permits necessary to construct and complete the project. Prepare the resource agency forms and applications for all required permitting, negotiate the permit requirements, and obtain approved permits. The permits required may include, but are not limited to the following:

- a. California Department of Fish and Wildlife Section 1602 Streambed Alteration Agreement
- b. San Francisco Bay Regional Water Quality Control Board Section 401 Water Quality Certification
- c. U.S. Army Corps of Engineers Section 404 Nationwide Permit
- d. Contra Costa County Building Permit

Design Professional shall be responsible to pay the permit processing or application fees (Town pays mitigation fees, if necessary).

A29. Upon receiving feedback from Town Council and staff, Design Professional shall prepare a 90% design stage PS&Es as follows:

- a. Based on comments received on the 65% Design and the CEQA/NEPA processes, Design Professional shall advance the Project design to the point that all design, construction and contracting issues are resolved and solutions are represented in the PS&Es (90% PS&Es). Design Professional shall prepare the 90% PS&Es, including plans, specifications, front-end bidding and contract documents, notice to bidders, and engineer's estimate of probable cost. The 90% PS&Es shall comprise a complete set ready for bidding, except any final revisions derived from the final Town and Agencies review. Design Professional shall submit the 90% PS&Es to the Town, utility companies, Contra Costa County and other agencies for final review and comment.

- b. Design Professional shall document comments received from 65% review and CEQA/NEPA, and shall incorporate comments into plans and technical specifications in an appropriate manner or document reasoning for excluding. Design Professional shall incorporate the front-end contracting documents into the PS&Es for 90% review. Design Professional shall update the technical specifications and details to conform with Town standards. Design Professional shall work with the Town and other agencies, such as CCCSD, to resolve any conflicts between the comments of different reviewers.
  - c. The 90% Design set shall be clearly marked as “Draft 90% Design” on each sheet in the footers, or in text boxes if in the drawing frames. Clearly mark dates in footers and text boxes to match new date of issuance of the 90% Design set. All design files shall be in AutoCAD, and technical specifications shall be in the Caltrans format. Deliverables shall be submitted to the Town for review and comment in stapled or bound hard copies (5 sets, half-sized for plans) and an electronic copy in Portable Document Format (PDF). Deliverables to other agencies shall conform to their requirements.
- A30. Upon receiving feedback from Town Council and staff, Design Professional shall prepare a PS&Es for Bidding (100% PS&Es) as follows:
- a. Design Professional shall prepare and deliver the Bid Set (100% PS&E) contract documents, inclusive of Final PS&Es, after the Town’s and agencies review of the 90% PS&E Submittal. Design Professional shall document comments received from 90% review and CEQA/NEPA, and shall incorporate comments into in Contract Documents, inclusive of PS&Es, in an appropriate manner or document reasoning for excluding. The 90% engineer’s estimate shall have been updated to reflect the refinements from the 90% PS&E to the 100% PS&E Submittal.
  - b. Design Professional shall submit the Bid Set documents for final print review by the Town prior to publication, and address minor revisions as directed by the Town. Design Professional’s Engineer-in-Responsible-Charge shall stamp and sign the approved final Bid Set, and appropriate the California-licensed professionals shall also stamp and sign the individual plan sheets under their charge. Design Professional shall then submit the final cover pages of the Plans and Specifications for signature by the Public Works Director. The final Bid Set shall be clearly marked as “Bid Set” on each sheet in the footers, or in text boxes if in the drawing frames. Include semi-transparent watermark across sheets behind linework and text as deemed appropriate by Town Project Manager (PM). Clearly mark dates in footers and text boxes to match new date of issuance of Bid Set.
  - c. All design files shall be in AutoCAD, and technical specifications shall be in the Caltrans format. Deliver to the Town the Final Bid Set (100% design), including final planset, specifications, advertisement, contracting documents and

engineer's estimate. Deliverables shall be published and submitted as bound hard copies (3 sets) and an electronic copy in Portable Document Format (PDF). Additionally, all AutoCAD drawings shall be submitted as ETRANSMIT files including all external references, images, line weights and other associated files. MS Word documents for bid specifications, inclusive of front-end contract documents, shall be delivered to the Town. The City utilizes electronic bidding services, such as E-Bid, and Contractor Exchanges. For Bidding purposes, Design Professional shall provide to the Town an electronic copy in Portable Document Format (PDF) of Bid Plans and Specifications, inclusive of front-end contract documents. Electronic copies of Plans shall be provided in Half sized and Full sized, and Specifications shall be standard 8-1/2"x11" with some 11"x17", as necessary. Additionally, the Consultant shall provide 3 bound hard copies of Bid Specifications, inclusive of front-end contract documents, documents, 1 copy of bound D-sized (24"x36" sheet) Bid Plans and 3 copies of bound half-sized (11"x17" sheet) Bid Plans for Town use during bidding process. Design Professional shall prepare and submit to permitting and other agencies, as required, any bid set contract documents, inclusive of plans and specifications, in a number and format appropriate to agencies requirements.

- A31. Following Town approval to advertise for Bidding, Design Professional shall provide Bid Phase support as follows:
- a. Design Professional shall assist the Town as requested during the bidding process. The work may include answering questions regarding design issues, providing consultation and interpretation of the construction documents, and assisting the Town in preparation of addenda to the PS&E during the advertisement period. Design Professional shall attend pre-bid meetings or bid opening, and review of bids if requested. The Town will advertise the Project for bidding and distribute the plans to prospective bidders. Design Professional shall designate a person to receive contractor inquiries, unless otherwise directed by the Town.
  - b. Design Professional shall prepare and submit the Conformed Set contract documents, incorporating addenda appropriately. Remove "Bid Set" from footers and text boxes in the drawing frame from each sheet of the contract documents and clearly mark with "Conformed". Remove all Watermarks as deemed appropriate by Town PM. Modify dates in footers and text boxes to match new date of issuance of conformed set. Design Professional's Engineer-in-Charge shall stamp and sign the approved final Conformed set, and appropriate the California-licensed professionals shall also stamp and sign the individual plan sheets under their charge. The Consultant shall then submit the final cover pages of the Plans and Specifications for signature by the Public Works Director.
  - c. All design files shall be in AutoCAD, and technical specifications shall be in the Caltrans format. Deliver the Final Conformed Set (100% design, addenda and

related revisions inclusive), including final planset, specifications, advertisement, contracting documents and engineer's estimate. the Consultant shall provide to the Town an electronic copy in Portable Document Format (PDF) of Conformed Plans and Specifications, inclusive of front-end contract documents. Electronic copies of Conformed Plans shall be provided in Half sized and Full sized, and Conformed Specifications shall be standard 8-1/2"x11" with some 11"x17", as necessary. Additionally, Design Professional shall provide 3 bound hard copies of Conformed Specifications, inclusive of front-end contract documents, documents, 3 copies of bound D-sized (24"x36" sheet) Conformed Plans and 10 copies of bound half-sized (11"x17" sheet) Conformed Plans for Town use during construction process.

- d. Design Professional shall prepare and submit to permitting and other agencies, as required, any conformed contract documents, inclusive of plans and specifications, in a number and format appropriate to agencies requirements.

A32. Design Professional shall provide Construction Support by assisting the Town as requested with technical issues arising during and immediately after the Project construction. The work shall include: reviewing contractor submittals, addressing requests for information, providing consultation and interpretation of the construction documents, assisting the Town in the preparation of Contract Change Orders during construction, and developing construction record drawings. The Consultant will attend the preconstruction and other job site meetings, if requested.

**EXHIBIT B**  
**COMPENSATION**

**EXHIBIT C**  
**GRANT REQUIREMENTS**

## EXHIBIT C

### SPECIAL PROVISIONS FOR FEDERAL AID CONTRACTS (FEMA)

Design Professional, where applicable, shall meet all the provisions to support compliance with the requirements of the Federal Emergency Management Agency (FEMA), Hazard Mitigation Grant Program Agreement (HMGP No. 4344-605-23R) received by the Town of Moraga for the Project. The FEMA Grant Agreement is incorporated by reference herein. The Design Professional is expected to be knowledgeable of the FEMA Grant requirements. The following are some of the Design Professional's obligations to perform to aid the Town in meeting the FEMA Grant requirements:

#### ARTICLE SP-1. EQUAL EMPLOYMENT OPPORTUNITY

Design Professional, where applicable, is prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Design Professional shall comply with the requirements as set forth in Executive Order (EO)11246, EO 11375, and Title 41 Code of Federal Regulations (C.F.R.) Section 60-1.4, et. seq..

Except as otherwise provided under 41 C.F.R. Part 60, during the performance of this contract, the Design Professional agrees as follows:

- A. Design Professional will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The design Professional will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. Design Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- C. Design Professional will, in all solicitations or advertisements for employees placed by or on behalf of the design Professional, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- D. Design Professional will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an

employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- E. Design Professional will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of design Professional 's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- F. Design Professional will comply with all provisions of EO 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- G. Design Professional will furnish all information and reports required by EO 11246, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- H. In the event of Design Professional 's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- I. Design Professional will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. Design Professional will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- J. Provided, however, that in the event Design Professional becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Design Professional may request the United States to enter into such litigation to protect the interests of the United States.
- K. Design Professional further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally

assisted construction work.

- L. Design Professional agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- M. Design Professional further agrees that it will refrain from entering into any contract or contract modification subject to EO11246, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### ARTICLE SP-2. DAVIS-BACON ACT

Where applicable, Design Professional shall comply with the Davis-Bacon Act:

- A. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act Title 40 United States Code (U.S.C.) Sections 3141-3144 and 3146-3148, and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Design Professional shall comply with 40 U.S.C. § 3141-3144, and § 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.
- B. Design Professional is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C. Additionally, Design Professional is required to pay wages not less than once a week for labor covered under the Davis-Bacon Act.

ARTICLE SP-3.  
COPELAND ANTI-KICKBACK ACT

Where applicable, Design Professional shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

- A. Design Professional shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this contract.
- B. Design Professional shall insert in any subcontracts the clause above and such other clauses as the Federal Emergency Management Agency (FEMA) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Design Professional shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. In addition to other provisions of this contract, a breach of the contract clauses in this Article may be grounds for termination of the contract, and for debarment as a contractor or subcontractor as provided in 29 C.F.R. § 5.12.”

ARTICLE SP-4.  
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Where applicable, Design Professional shall comply with the Contract Work Hours and Safety Standards Act (29 C.F.R. § 5.5(b)):

- A. No Design Professional or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. In the event of any violation of the clause set forth in paragraph (b)(1) of this section Design Professional and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Design Professional and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- C. The Town of Moraga shall upon its own action, or upon written request of an authorized representative of FEMA or the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Design Professional or subcontractor under any such contract or any other Federal contract with the same Design Professional, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Design Professional, such sums as may be determined to be necessary to satisfy any liabilities of such Design Professional or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- D. Design Professional, or any subcontractor, shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section

ARTICLE SP-5.  
CLEAN AIR ACT

Design Professional shall comply with the Clean Air Act, as amended, (42 U.S.C. § 7401, et seq.):

- A. Design Professional shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act.
- B. Design Professional shall report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate Environmental Protection Agency (USEPA) Regional Office.
- C. Design Professional shall include these requirements in each subcontract.

ARTICLE SP-6.  
FEDERAL WATER POLLUTION CONTROL ACT

Design Professional shall comply with the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251, et seq.):

- A. Design Professional shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act.
- B. Design Professional shall report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate State Regulatory Office and USEPA Regional Office.
- C. Design Professional shall include these requirements in each subcontract.

ARTICLE SP-7.  
ADDITIONAL GRANT/LOAN COMPLIANCE REQUIREMENTS

Design Professional shall comply with the following access to records requirements:

- A. Design Professional shall provide State of California, Town of Moraga, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. Design Professional shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Design Professional shall provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D. In compliance with the Disaster Recovery Act of 2018, the Town and Design Professional shall acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

ARTICLE SP-8.  
USE OF DHS EMBLEMS/MARKS

Design Professional shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

ARTICLE SP-9.  
FEDERAL FINANCIAL ASSISTANCE

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Design Professional will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

ARTICLE SP-10.  
COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. Design Professional must maintain financial management systems to account for and track funds, as referenced in 2 CFR 200.302.
- B. Design Professional agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- C. Design Professional also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative

Agreements to State and Local Governments.

- D. Any costs for which payment has been made to Design Professional that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Design Professional to TOWN.
- E. All subcontracts in excess of \$25,000 shall contain the above provisions

ARTICLE SP-11.  
RETENTION OF RECORDS/AUDIT

- A. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Design Professional, subconsultants, and Town shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, Town, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Design Professional and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.
- B. Design Professional shall maintain all documents and records prepared by or furnished to Design Professional during the course of performing the services for at least three (3) years following completion of the services. Such records include, but are not limited to, correspondence, internal memoranda, technical reports and investigations, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this contract. Design Professional shall permit Town to audit, examine and make copies, excerpts and transcripts from such records, and Design Professional shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after Town makes the final or last payment or within three (3) years after any pending issues between Town and Design Professional with respect to this contract are closed, whichever is later.

ARTICLE SP-12.  
DEBARMENT AND SUSPENSION CERTIFICATION

- A. Design Professionals may be subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 CFR

180. These regulations restrict federal financial assistance awards, subawards, and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in the federal assistance programs or activities.

- B. Design Professional's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Design Professional has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, 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 (3) 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 (3) years. Any exceptions to this certification must be disclosed to Town.
- C. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Design Professional responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- D. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by FEMA.

#### ARTICLE SP-13.

#### DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

This contract is not subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

#### SPECIAL PROVISIONS FOR STATE AID CONTRACTS (CNRA)

Design Professional, where applicable, shall meet all the provisions to support compliance with the requirements of the California Natural Resources Agency (CNRA), California River Parkways Grant Program Agreement (No. R61504-0) received by the Town for the Project. The CNRA Grant Agreement is incorporated by reference herein. The Design Professional is expected to be knowledgeable of the CNRA Grant requirements.

#### SPECIAL PROVISIONS FOR LOCAL AID CONTRACTS (EBRPD)

CONSULTANT, where applicable, shall meet all the provisions to support compliance with the requirements of the East Bay Regional Park District (EBRPD), Measure WW Park Bond Contract – Urban Creeks Grant Program (No. 523300-002) received by the TOWN for the Project. The EBRPD Grant Agreement is incorporated by reference herein. The CONSULTANT is expected to be knowledgeable of the EBRPD Grant requirements.