



State of California - Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
P.O. Box 944209  
Sacramento, CA 94244-2090  
<http://www.wildlife.ca.gov>

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



**April 4, 2025**

**Re: P2450008 Big Canyon Coastal Habitat Restoration and Adaptation Project**

Enclosed is one (1) complete set of the Agreement. Please sign and return the STD 213 Standard Agreement and Acknowledgement of Work Commencement Authorization Disclaimer to:

[Jillian.Harris@wildlife.ca.gov](mailto:Jillian.Harris@wildlife.ca.gov).

**Questions concerning the services to be performed under this Agreement should be directed to the CDFW Contract Manager, Alys Arenas, at [Alys.Arenas@wildlife.ca.gov](mailto:Alys.Arenas@wildlife.ca.gov) or (949) 402-4339.**

Sincerely,

Jillian Harris, Contract Analyst  
Business Management Branch  
California Department of Fish and Wildlife



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Re: P2450008 Big Canyon Coastal Habitat Restoration and Adaptation Project

**ACKNOWLEDGEMENT OF WORK COMMENCEMENT AUTHORIZATION  
DISCLAIMER**

Where approval from the California Department of Fish and Wildlife (CDFW) and the Department of General Services (DGS) applies, the attached contract shall be of no force or effect until it is signed by both parties (CDFW and Contractor) and/or approved by the DGS. The signing of this contract by your organization does not authorize the commencement of work.

By signing this letter, your organization acknowledges and agrees not to begin work until all approvals have been obtained, the contract has been fully executed, and the contractor has been given authorization to begin work. Should any work begin before all approvals are obtained or authorization is given, services will be considered voluntary.

Please be advised that failure to sign and return this letter will delay approval of your contract.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing

*Conserving California's Wildlife Since 1870*

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

P2450008

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

California Department of Fish and Wildlife (CDFW)

CONTRACTOR NAME

City of Newport Beach

2. The term of this Agreement is:

START DATE

Upon California Department of General Services Approval

THROUGH END DATE

December 31, 2027

3. The maximum amount of this Agreement is:

\$0.00 | Zero Dollars and Zero Cents

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	5
Exhibit A ATTCH 1	Right of Entry Permit	9
Exhibit A ATTCH 2	Project Map	1
+ - Exhibit B	Budget Detail and Payment Provisions	1
+ - Exhibit C	Modified General Terms and Conditions (GTC 02/2025)	5
+ - Exhibit D	Modified Additional Provisions	9

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Newport Beach

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

P2450008

PURCHASING AUTHORITY NUMBER (If Applicable)

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

California Department of Fish and Wildlife

CONTRACTING AGENCY ADDRESS

P.O. Box 944209

CITY

Sacramento

STATE

CA

ZIP

94244

PRINTED NAME OF PERSON SIGNING

Amy Mowrer

TITLE

Branch Chief - Business Management Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

## 1. Introduction of Services

The City of Newport Beach herein after referred to as “The City” agrees to provide to the California Department of Fish and Wildlife ("CDFW"): services, as summarized below, in accordance with the specifications, terms, and conditions contained herein.

The City will be project manager for the Big Canyon Coastal Habitat Restoration and Adaptation Project - Phase 3 ("Project"), the approved plans for which are on file with the City and incorporated herein by this reference.

## 2. Location of Services

The services will be performed at the following location:

The Project will be located at 1950 Back Bay Drive, Assessor's Parcel Numbers ("APN") 440-092-76, 440-092-77, 440-092-79, and 440-132-53 ("City Area"), and a portion of which is owned by CDFW, APN 440-092-75, and 440-132-27 ("CDFW Area").

See Exhibit A, Attachment 1 Right of Entry Permit and Exhibit A, Attachment 2 Project Map for additional information.

## 3. Service Schedule

Activities on State lands are restricted to daytime hours, between sunrise and sunset. The City will be required to obtain an agreement, in writing, from the CDFW Contract Manager for any changes to the service schedule.

## 4. Project Officials

CDFW Project Officials	The City Project Officials
<b>Contract Manager</b> Name: Alys Arenas Orange County Reserve Manager  Phone: (949) 402-4339 Email: <a href="mailto:Alys.Arenas@Wildlife.ca.gov">Alys.Arenas@Wildlife.ca.gov</a> Address: 600 Shell Maker Road, Newport Beach, CA 92660  <b>Direct all inquiries to:</b> CDFW – Name: Alicia Sanchez Address: 3883 Ruffin Road San Diego, CA 92123  Phone: (858) 285-7518 Email: <a href="mailto:Alicia.Sanchez@wildlife.ca.gov">Alicia.Sanchez@wildlife.ca.gov</a>	<b>Project Director</b> Name: Jim Houlihan Deputy Public Works Director/City Engineer City of Newport Beach  Phone: (949) 644-3319 Email: <a href="mailto:JHoulihan@newportbeachca.gov">JHoulihan@newportbeachca.gov</a> Address: 100 Civic Center Drive, Newport Beach, CA 92658  <b>Direct all inquiries to:</b>  Name: Same as above Address:  Phone: Email:

Either party may make changes to the Project Officials by giving written notice to the other party. Said changes will not require an amendment to this Agreement.

## **5. Scope of Work**

### **A. Background and Objectives**

In summary, the Project will restore historic salt marsh and riparian habitat to the 13-acre area of Big Canyon adjacent to Back Bay Drive. The Project will address selenium accumulation and impacts from dry weather flows, eliminate invasive plants, regrade the site to extend saltwater influence from the back bay, replant with native plants to restore riparian and upland habitats, restore historical salt marsh and establish transitional wetlands that will allow for upslope migration and resiliency to long term sea level rise, restore tidal marsh to further reduce selenium bioavailability found naturally within marine deposits in the watershed, maintain positive drainage during low flows, address mosquito breeding habitat, and incorporate fuel modification on surrounding sloping parcels to reduce fire risks to nearby homes.

### **B. Work to be Performed**

The Project will be managed by the City on behalf of CDFW, by and through contracts led by the City through competitive bid processes and/or with its own forces. CDFW will provide some oversight of the selection process and must be notified of the selected Contractor. This oversight will be an advisory role as the local wildlife, biological and wetland experts. The City and CDFW agree that the City will serve as the lead agency for the Project under the California Environmental Quality Act ("CEQA"), and that the City will assist with the application for a Coastal Development Permit from the California Coastal Commission either by serving as the applicant, co-applicant, or otherwise as may be necessary or desirable.

City will undertake and diligently pursue to completion the Project in substantial conformance with the plans approved by City, which are on file with the City and incorporated herein by this reference. City must comply will all applicable federal and state laws regarding public works projects, including but not limited to, competitive bidding, bonding, and prevailing wages. The City must comply with all applicable federal and state contracting requirements. All expenditures made with federal award money, if any, including subcontracts, will be subject to the Uniform Guidance, Title 2 in the Code of Federal Regulations, Subtitle A, Chapter II, part 200 (2 CFR 200). Additionally, non-federal entities are subject to 2 CFR 200.317, General Procurement Standards, through 2 CFR 200.327, Contract Provisions, when expending funds under a federal award.

Project tasks include:

#### **Task 1 – Site Preparation**

1. Implementing erosion and sediment control measures and perimeter fencing.
2. Creating access roads along the periphery of the Project site.
3. Diverting flows in Big Canyon Creek to the northern perimeter.

**Task 2 – Clearing and Grubbing**

1. Dewatering the freshwater pond by opening up the existing levee and allowing gravity to draw out the ponded water. After dewatering, remove cattails within the pond disposed of off-site.
2. Removing vegetation from the Project site in areas that will be excavated for the estuary or graded and restored with native marsh, alkali meadow, southern willow scrub or coastal sage scrub vegetation.
3. Removing trees infested with polyphagous shot hole borer (PSHB) and haul offsite to an approved landfill.
4. Chipping woody material to be used as mulch and spread as wood chips on trails.

**Task 3 - Excavation, Grading, On-site Filling in, Upland Areas & Fine Site Grading**

1. Installing a new culvert with backfill cover across the Back Bay Drive northern access road entrance.
2. Diverting flows in Big Canyon Creek to the northern perimeter.
3. Installing a low berm diversion between the salt marsh in Newport Bay and the freshwater Creek to prevent freshwater flows and tidal flows from entering the Project site.
4. Dredging of the tidal channel in Newport Bay leading into the Creek from Back Bay Drive to remove accumulated sediment and increase the tidal range to the restored salt marsh. The dredged material will be stockpiled and used for the salt marsh restoration area.

**Task 4 – Install Temporary Irrigation, Soil Amendments, Planting & Seeding**

1. Installing a temporary irrigation system and revegetating the Project site using native-species container plants and hydroseeding methods.

**Task 5 – Maintenance & Monitoring**

1. Performing the 5-year maintenance and monitoring period after all plantings and seedings have been installed.

**C. Reports**

The Newport Bay Naturalists and Friends, a California non-profit public benefit corporation doing business as Newport Bay Conservancy ("Conservancy"), is the recipient of grants from, including but not necessarily limited to, the Ocean Protection Council and private corporate donor(s), which provides funds for the restoration of Big Canyon ("Grant"). The Conservancy has led an ongoing restoration project within Big Canyon, commonly known as the Big Canyon Coastal Habitat Restoration and Adaptation Project, with the cooperation of the City and CDFW, with the restoration being conducted in phases, Phase 1 completed in July 2017, and Phase 2 completed in June of 2021. The City and CDFW will collectively be responsible for cooperating with the Conservancy to ensure the Project is conducted in full compliance with the terms and conditions of the Grant, including but not limited to, bookkeeping, reporting, deliverables, deadlines, management, operations, and all other aspects of the Grant (Grant Agreement No. C0875017). A copy of the executed grant agreement will be

provided by the Conservancy once the agreement is executed with the Ocean Protection Council (OPC).

**D. Schedule of Completion Dates (See *Ocean Protection Grant for Task Details*)**

<b><u>Activity</u></b>	<b><u>Anticipated Due Date*</u></b>
Task 1 – Site Preparation	September 2025
Task 2 – Clearing and Grubbing	September/October 2025
Task 3 - Excavation, Grading, On-site Filling in Upland Areas & Fine Site Grading	November 2025
Task 4 – Install Temporary Irrigation, Soil Amendments, Planting & Seeding	December 2025/January 2026
Task 5 – Maintenance & Monitoring	120 days after plants are installed
Draft Report Due	March 2026
Final Report Due	July 2027

\*Changes to due dates must be agreed upon in writing by the City and CDFW Contract Manager. Due dates must fall within the term of the contract.

**6. Minimum Qualifications/Requirements**

In the request for bid documents, City must require the applicable minimum qualifications and other requirements for prospective contractors to be eligible for award of the Project.

**7. Insurance Requirements**

The City will require each contractor working on the Project to maintain the following insurance coverage throughout the duration of this agreement and must supply proof of coverage upon request by CDFW. Insurance must be in accordance with the Exhibit D CDFW Additional Provisions.

- A. Commercial General Liability (limits not less than \$1,000,000 per occurrence with a \$2,000,000 annual policy aggregate).
- B. Automobile Liability (limits not less than \$1,000,000 combined single limit per accident).
- C. Pollution Liability (limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate which may include Pesticide/Herbicide Applicator Coverage if applicable, or its equivalent).

- D. Workers Compensation and Employers Liability (limits of \$1,000,000 are required. The waiver of subrogation endorsement must also be provided).

The above policies must each be endorsed to include “the State of California, its officers, agents and employees as additional insured but only with respect to work performed under the Contract”.

## RIGHT OF ENTRY PERMIT

Agency: California Department of Fish and Wildlife

Project: Big Canyon Coastal Habitat Restoration and  
Adaptation Project, Phase 3

This Right of Entry Permit ("Permit") is made and entered into as of \_\_\_\_ April 1 \_\_\_\_, 2025 between the State of California, acting by and through the California Department of Fish and Wildlife ("**State**" or "**CDFW**"), and the City of Newport Beach ("**City**"), a California municipal corporation and charter city, acting on behalf of itself and its officers and employees ("**Permittee**").

### **RECITALS**

- A. The State owns, operates, and maintains portions of the Big Canyon Nature Park in the County of Orange, State of California; and
- B. Permittee has applied to State for permission to access those portions of Big Canyon Nature Park for purposes of carrying out The Big Canyon Coastal Habitat Restoration and Adaptation Project - Phase 3 (the "**Project**") utilizing the Permittee's Parties as defined in paragraph 6 below.
- C. The State desires to accommodate Permittee's application for permission to enter those portions of Big Canyon Nature Park for purposes of the Project, as and to the extent such project permitted, approved and conditioned by the California Coastal Commission (the "**Environmental Document**") and as may be conditioned by any other regulatory agency having jurisdiction.

### **TERMS AND CONDITIONS**

This Permit is made upon and subject to the following terms and conditions:

1. **Project Description:** By this Permit, State gives permission to Permittee to enter upon those lands legally described and depicted on the attached Exhibit A (the "**Property**") solely for the purpose of the Project, the limits of which are shown on Exhibit A.
2. **Permit Subject to Laws and Permits:** Permittee shall, at Permittee's sole cost and expense, comply with the permit issued by the California Coastal Commission, and all municipal, state, and federal authorities now in force or which may hereafter be in force pertaining to the Project and use of the Property as provided by this Permit. This Permit is expressly made subject to any and all applicable laws, statutes, codes, regulations, ordinances, orders, requirements, and regulatory permits or approvals, including any conditions of such permits and approvals issued or required to be issued by such regulatory agencies for or in connection with the Project. All such conditions shall be subject to the prior written approval of the State.

Prior to entering or commencing any work on the Property, Permittee shall obtain all such legally required permits or approvals and submit to the State full and complete copies of the same, including documentation related to or referenced in such permits and approvals, along with the corresponding agency contact and telephone numbers, and related California Environmental Quality Act ("**CEQA**") and/or National Environmental Policy Act documentation, if applicable.

3. **Term of Permit:** This Permit shall only be for the period beginning upon commencement of the work for the Project and ending upon completion of the work for the Project, unless revoked or terminated according to its terms or reasonably extended by written mutual agreement.

4. **Consideration:** CDFW has agreed to grant this Permit for no cost, in exchange for Permittee performing the Project.
5. **Permit Subject to Existing Claims:** This Permit is subject to existing contracts, permits, leases, licenses, encumbrances, and claims, as well as all matters of record which may affect the Property.
6. **Waiver of Claims and Indemnity:** This Permit is made on the express condition that the State is to be free from any and all liability by reason of injury or death to persons or loss or damage to property, from whatever cause, arising out of the use by Permittee, its directors, officers, employees, agents, representatives or contractors ("**Permittee's Parties**") of the Property or any part of it. Permittee, on behalf of itself and each of Permittee's Parties, waives all claims against the State, its directors, officers, employees, agents, representatives and contractors, for injury (including death), loss or damage caused by, arising out of, or in any way connected with the exercise of this Permit or use of the Property. Permittee covenants and agrees to protect, save harmless, indemnify, and defend the State, its directors, officers, employees, agents, representatives and contractors from and against any and all claims, losses, costs, expenses, damages or liability (collectively, "**Claims**") made during the performance of the Project which allege that they are caused by, arising out of, or in any way connected with the Project, including any CEQA lawsuits against CDFW, any failure on the part of Permittee to fulfill its obligations under this Permit, and any exercise by Permittee of the rights granted by this Permit, except to the extent of Claims resulting solely from the negligent, willful or grossly negligent acts of the State. Permittee will further cause such indemnification and waiver of claims in favor of the State to be inserted in each contract and agreement that Permittee executes for the provision of equipment, materials or services in connection with the Project, except that such indemnification and waiver shall apply to all Claims regardless of when such Claim are made.

Additionally, the Permittee has agreed to perform the Project on behalf of the State on the express condition that the Permittee, its officials, and its employees, are to be free from any and all liability by reason of injury or death to persons or loss or damage to property, from whatever cause, arising out of the Project after it has been completed. The State, on behalf of itself and its directors, officers, employees, agents, representatives or contractors ("**State Parties**"), waives all claims against the Permittee, its officials, and its employees, for injury (including death), loss or damage caused by, arising out of, or in any way connected with the use of the Property or the Project which are made after the Project has been completed, except to the extent of Permittee's gross negligence or willful misconduct. The State covenants and agrees to protect, save harmless, indemnify, and defend the Permittee from and against any and all Claims made after the Project has been completed which allege that they are caused by, arising out of, or in any way connected with the use of the Property or the Project, and additionally, for any failure on the part of the State to fulfill its obligations under this Permit, except to the extent resulting solely from the willful or grossly negligent acts of the City.

The Permittee shall require the Permittee's contractor retained to perform the Project to execute a contract wherein the contractor agrees to indemnify, defend and hold harmless the Permittee and CDFW against any and all Claims which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided in connection with the Project including, without limitation, defects in workmanship or materials or its presence or activities conducted on the Property (including the negligent, reckless, and/or willful acts, errors and/or omissions of itself, its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Nothing herein shall be construed to require the Permittee's contractor to indemnify the Permittee or CDFW from any Claims arising from the sole negligence or willful misconduct of the Permittee or the State Parties.

7. **Damage to Lands and Property:** During performance of the Project, Permittee shall be responsible for any damage to lands of the State or third parties resulting from Permittee's negligent installation, operation, and maintenance of the Project, including, but not limited to soil erosion, collapse or

subsidence and damage resulting from it, and Permittee shall promptly repair and restore to its original condition any such property of the State or any third party, including, but not limited to, levees, roads, bridges, ditches, pipelines, water developments, utilities, buildings, and fences.

- 8. Hazardous Materials:** Without limiting the obligations of Permittee under Paragraph 6 of this Permit, Permittee hereby releases and agrees to indemnify, defend, protect, and hold harmless the State from and against any and all Claims (as defined in Paragraph 6 above) arising from or connected with any Hazardous Materials (as defined below) released or brought onto the Property by Permittee or its contractors in the performance of the Project, except any Hazardous Materials placed, disposed, or released by State. This release and indemnification includes, without limitation, Claims for injury to or death of any person or damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against the State by reason of any such Claim, Permittee shall, at the election of and upon written notice from State, defend such action or proceeding by counsel reasonably acceptable to the State or reimburse State for all reasonable charges incurred for services of the California Attorney General in defending the action or proceeding.

The term “**Hazardous Materials**” includes, without limitation, any substance, material or waste that is: (a) flammable, explosive or radioactive; (b) a petroleum product or petroleum hydrocarbon, including crude oil, or any product, by-product or fraction thereof; or (c) designated, defined, classified or regulated as a hazardous material, hazardous waste, hazardous or toxic substance, pollutant, contaminant or related material under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601, *et seq.*; hereinafter, “**CERCLA**”); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901, *et seq.*; hereinafter “**RCRA**”); the Toxic Substances Control Act (15 U.S.C. section 2601, *et seq.*; hereinafter “**TSCA**”); the Hazardous Materials Transportation Act (49 U.S.C. section 5101, *et seq.*; hereinafter “**HTA**”); the Hazardous Waste Control Law (Health & Saf. Code section 25100, *et seq.*; hereinafter “**HCL**”); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Saf. Code section 25300, *et seq.*; hereinafter “**HSA**”), including the regulations adopted and publications promulgated pursuant to such statutes, or any other applicable Environmental Laws now in effect or enacted after the date of this Permit. The term “**Environmental Laws**” includes without limitation, CERCLA, RCRA, TSCA, HTA, HCL, HSA and any other federal, state, local or administrative agency statute, code, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment, or Hazardous Materials.

- 9. Contractors:** Permittee shall incorporate the terms, conditions, and requirements of this Permit when contracting out all or any portion of the work permitted hereunder. Permittee shall be responsible for ensuring that all contractors and subcontractors comply with the terms and conditions of this Permit. Failure of any contractor or subcontractor to abide by the terms and conditions of this Permit shall constitute a default by Permittee (see Paragraph 24) allowing State to terminate this Permit and seek all legal remedies.
- 10. Labor Code Requirements; Prevailing Wage:** Permittee understands and agrees that work performed on the Property may be subject to California Labor Code requirements, which include prevailing wage provisions. For more details, please refer to the Department of Industrial Relations (DIR) website at <http://www.dir.ca.gov>. Permittee shall pay prevailing wage to all persons employed in the performance of any part of the Project if required by law to do so.
- 11. Insurance Requirements:** As a condition of this Permit, and in connection with its indemnification and waiver of claims for the Project, Permittee will provide, and/or cause its contractors to provide, a policy or policies of insurance as follows:

## **COMMERCIAL GENERAL LIABILITY**

Permittee shall maintain general liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate annually for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of the Project, Property, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under this Permit as an insured contract.

The policy must include State of California, the California Department of Fish and Wildlife, and their officers, agents and employees as additional insureds by endorsement, but only insofar as the operations under this Permit are concerned. The additional insured endorsement must be provided with the certificate of insurance.

## **AUTOMOBILE LIABILITY**

Permittee shall maintain motor vehicle liability insurance with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The policy shall name the State of California and the California Department of Fish and Wildlife as additional insureds by endorsement with respect to liability arising out of all vehicles owned, hired and non-owned. The additional insured endorsement must be provided with the certificate of insurance.

## **WORKERS' COMPENSATION**

Permittee shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Project, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California and the California Department of Fish and Wildlife. The waiver of subrogation endorsement must be provided with the certificate of insurance.

## **GENERAL REQUIREMENTS**

Permittee shall ensure that the following general requirements are met:

- a. Insurance Companies must be acceptable to the Department of General Services, Office of Risk and Insurance Management.
- b. Coverage needs to be in-force for the complete term of this Permit. If insurance expires during the term of the Permit, a new certificate must be received by the State within thirty (30) days of the expiration date of the existing policy. Any new insurance must meet the requirements of this Permit.
- c. Permittee shall notify the State within five business days of Permittee's receipt of any notice of cancellation or non-renewal of any insurance required by this Permit.
- d. Permittee is responsible for any deductible or self-insured retention contained within the insurance program.
- e. In the event Permittee fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Permit upon the occurrence of such event, subject to the provisions of this Permit.
- f. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the State.
- g. If Permittee is self-insured in whole or in part as to any of the above described types and levels of coverage, Permittee shall provide State with written acknowledgment of this fact at the time of the execution of this Permit. The State may require financial information to justify Permittee's self-insured status. If, at any time after the execution of this Permit, Permittee abandons its self-insured status, Permittee shall immediately notify State of this fact and shall comply with all of the terms and conditions of this Insurance clause pertaining to policies of insurance in regard to those types and levels of insurance.

It is agreed that State shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

#### **FIRE AND CASUALTY DAMAGES.**

State will not keep improvements (if any) which are constructed or installed by Permittee under the provisions of this Permit insured against fire or casualty, and Permittee shall make no claim of any nature against State by reason of any damage to the business or property of Permittee in the event of damage or destruction by fire or other cause, arising other than from or out of gross negligence or willful misconduct of agents or employees of the State in the course of their employment.

- 12. Reservation of Rights:** State reserves the right to use the Property in any manner, provided such use does not unreasonably interfere with Permittee's rights herein.
- 13. Access Limits and Special Conditions:** Access to the Property and use of roads/trails shall be limited to the route(s) designated by State and as depicted in Exhibit A.
- 14. Notice of Work:** Prior to any entry upon the Property for any of the purposes hereinabove set forth, Permittee shall notify the CDFW staff person named below (the "**CDFW Representative**") in writing at least three (3) business days prior to commencement of work. The Permittee shall also notify the CDFW Representative in writing at least forty-eight (48) hours in advance of any change in the project schedule or prior to cessation of work.

Alys Arenas, CDFW Reserve Manager  
600 Shellmaker Rd., Newport Beach, CA 92660  
(949) 402-4339  
alys.arenas@wildlife.ca.gov

- 15. Limits of Work:** In no event shall this Permit authorize work in excess of, contrary to, or that varies from the Project designs or the terms and conditions of any regulatory agency permit or approval or any other Project documents, approved by State. Under no circumstances, whether or not permitted or authorized by any regulatory agency permit or approval, shall work exceed that which is reasonably necessary to carry out the purpose of the Project or extend beyond the Project boundaries as depicted in Exhibit A. The State has issued this Permit in its capacity as the owner of the Property. Nothing in this Permit constitutes regulatory approval of the Project by the State or CDFW.
- 16. Special Hazards:** Reserved.
- 17. Public Safety:** Permittee shall erect orange plastic temporary construction fencing prior to commencement of work to prohibit public access to the construction zone, if applicable. Permittee shall remove such fencing within two (2) days of the completion of work. Permittee shall, or shall cause its contractors or subcontractors to take any and all other necessary and reasonable steps to protect the public from harm due to Project activities.
- 18. Compliance with Monitoring and Mitigation Measures:** Natural resource monitoring and mitigation measures shall be completed in consultation with and to the satisfaction of the CDFW Representative by applicable dates stated in the permit, approval, or other Project document under which the measure is required, if applicable.

Activities conducted on the Property authorized by this Permit will comply with all state and federal laws, including but not limited to the California Endangered Species Act (Fish and Game Code section 2808, *et seq.*), Fish and Game Code section 1600, *et seq.*, CEQA. Unless otherwise authorized by this Permit, all activities conducted on the Property will comply with applicable Wildlife Area Regulations set forth in Chapter 8 (commencing with Section 550) of Subdivision 2 of Division 1 of Title 14, California

Code of Regulations, or Ecological Reserve Regulations set forth in Chapter 11 (commencing with section 630) of Subdivision 2 of Division 1 of Title 14, California Code of Regulations, as applicable.

State will advise Permittee if any new special status species, threatened/endangered species protocols, or other resource issues are identified on the Property. Permittee shall consult with the State to determine the appropriate level of avoidance/mitigation necessary to protect the resource(s) during future work.

- 19. Restoration of Property:** Permittee shall be responsible for restoration, repair, and revegetation of the Property as specified in the Project Designs in consultation with, and to the satisfaction of, the CDFW Representative, unless otherwise specified, no later than 180 days after completion of the Project. These obligations shall survive the expiration or termination of this Permit.
- 20. Right to Halt Work:** The State reserves the right to halt work and require Permittee to carry out restoration, repair, and mitigation measures at any time, with or without prior notice to Permittee, in the event the State determines that any provision contained herein is violated, or any other threat to the Property or its resources, or the health and safety of any person(s) on the Property arises.
- 21. Use Restrictions:** The use of the Property by Permittee and/or Permittee's Parties shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance in writing by State.

Activities on the Property shall be conducted only in a manner consistent with this Permit that will not interfere with the orderly operation of the Property. Permittee agrees to prohibit any disorderly conduct and/or contraband. Contraband includes, but is not limited to: beer, alcoholic beverages, marijuana, illegal and illicit drugs, firearms, explosives, and weapons.

Use of specified roads and trails (as identified on Exhibit A) by any motorized vehicle (including but not limited to motorcycle, car, truck, jeep, tractor, or all-terrain vehicle) shall be limited to only the Permittee and Permittee's Parties for patrol, maintenance or repair purposes only and shall be subject to all other conditions and/or restrictions of this Permit.

Permittee shall not use or allow the Property to be used, either in whole or in part, for any purpose other than as herein set forth, without the prior written consent of CDFW.

- 22. State's Right to Enter:** At all times during the term of this Permit, there shall be and is hereby expressly reserved to State and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to enter upon said Property to survey, inspect, or perform any other lawful State purposes.

Permittee agrees to not interfere with State's right to enter.

- 23. Protection of Property:** Permittee shall protect the Property, including all improvements and the natural resources thereon, at all times at Permittee's sole cost and expense, and Permittee shall strictly adhere to the following restrictions:

(a) Permittee may not place or dump garbage, trash or refuse anywhere upon or within the Property, except in self-contained trash receptacles that are maintained to State's satisfaction by Permittee.

(b) Permittee may not commit or create, or suffer to be committed or created, any waste, hazardous condition and/or nuisance to occur upon the Property.

(c) Other than as required by the Project, Permittee may not cut, prune or remove any native trees or brush upon the Property, except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards, without first obtaining written permission from the CDFW Representative.

(d) Other than as required by the Project, Permittee may not disturb, move or remove any rocks or boulders upon the Property except for routine fire protection, trail clearing, maintenance or the elimination of safety hazards, without first obtaining written permission from the CDFW Representative.

(e) Other than as required by the Project, Permittee may not grade or regrade, or alter in any way, the ground surface of the Property, without first obtaining written permission from the CDFW Representative.

(f) Permittee may not bait, poison, trap, hunt or engage in any other activity which results in the killing, maiming or injury of animals or wildlife upon the Property, without first obtaining written permission from the CDFW Representative.

(g) Permittee shall not generate, use, store, release, or dispose of Hazardous Materials on the Property, or authorize or permit any of the same by any third party.

(h) Permittee shall exercise due diligence in the protection of the Property against damage or destruction by fire, vandalism or other cause.

**24. Default:** In the event of a default or breach by Permittee of any of the terms or conditions set forth in this Permit, State may at any time thereafter, without limiting State in the exercise of any right or remedy at law or in equity which State may have by reason of such default or breach:

(a) Maintain this Permit in full force and effect and recover the consideration, if any and other monetary charges as they become due, without terminating Permittee's right to use of the State Property, irrespective of whether Permittee shall have abandoned the Property.

(b) Terminate this Permit whereupon Permittee shall immediately vacate and surrender possession of the Property to State. In such event, State shall be entitled to recover from Permittee all damages incurred by State by reason of Permittee's default including, but not limited to, the following:

(i) any amount necessary to compensate State for all the detriment proximately caused by Permittee's failure to perform its obligations under this Permit or which in the ordinary course of events would be likely to result therefrom; plus

(ii) at State's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. Upon termination of this Permit, State shall have the right to make any reasonable repairs, alterations, restoration, or modifications to the Property, which State, in its sole discretion, deems reasonable and necessary for the State's use of the Property.

**25. State's Right to Cure Permittee's Default:** At any time, after Permittee is in default or material breach of this Permit, State may, but is not required to, cure such default or breach at Permittee's cost. If State at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by State shall be due immediately from Permittee to State at the time the sum is paid by State, and if received from Permittee at a late date shall bear the maximum interest allowed by California law from the date the sum is paid by State until State receives payment from Permittee.

**26. Revocation of Permit:** State shall have the absolute right to revoke this Permit for any reason upon ten (10) days written notice to Permittee. Written notice to Permittee may be accomplished by electronic or facsimile transmission, and the notice period set forth in this paragraph shall begin on the date of the written notice. If Permittee is in breach of the Permit or owes money to the State pursuant to this Permit, any prepaid monies paid by Permittee to State shall be held and applied by the State as an offset toward damages and/or amounts owed. Nothing stated herein shall limit the State's exercise of its legal and equitable remedies. All written notices to Permittee shall be sent to the following address:

Public Works Director  
City of Newport Beach  
100 Civic Center Drive,  
Newport Beach, CA 92658

**27. Recovery of Legal Fees:** If any action is brought by either party to enforce or interpret any provision of this Permit or to restrain the breach of any agreement contained herein, or for the recovery of possession of the Property, or to protect any rights given, the prevailing party shall not be entitled to attorneys' fees..

**28. Voluntary Execution and Independence of Counsel:** By their respective signatures below each party hereto affirms that they have read and understood this Permit and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Permit.

**29. Reliance on Investigations:** Permittee accepts this Permit, and the Property to which it pertains, in its as-is condition and has made such investigation of the facts pertaining to this Permit and all the matters pertaining thereto as Permittee deems necessary.

**30. Entire Agreement:** The parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Permit contains the entire agreement of the parties, and that the terms of this agreement are contractual and not a mere recital.

**31. Warranty of Authority:** The undersigned each hereby represents that he or she has the authority to, and by signing this Permit does, bind the person or entity on whose behalf and for whom they are signing this Permit and the attendant documents provided for herein, and this Permit and said additional documents are, accordingly, binding on and enforceable against said person or entity.

**32. Assignment:** This Permit shall not, nor shall any interest herein, be assigned, mortgaged, hypothecated, or transferred by Permittee, whether voluntary or involuntary or by operation of law, nor shall Permittee let or sublet or grant any license of permit with respect to the use and occupancy of the Property or any portion thereof, without the prior written consent of State.

**33. Choice of Law:** This Permit will be governed and construed by the laws of the State of California.

**IN WITNESS WHEREOF**, the undersigned have executed this Permit effective as of the date first set forth above.

**STATE OF CALIFORNIA**

---

Erinn Wilson-Olgrin  
Regional Manager  
South Coast Region  
California Department of Fish and Wildlife

**CITY OF NEWPORT BEACH**

---

Grace K. Leung  
City Manager  
City of Newport Beach, a California municipal corporation:

Approved as to Form:

---

Aaron C. Harp  
City Attorney

Attest:

---

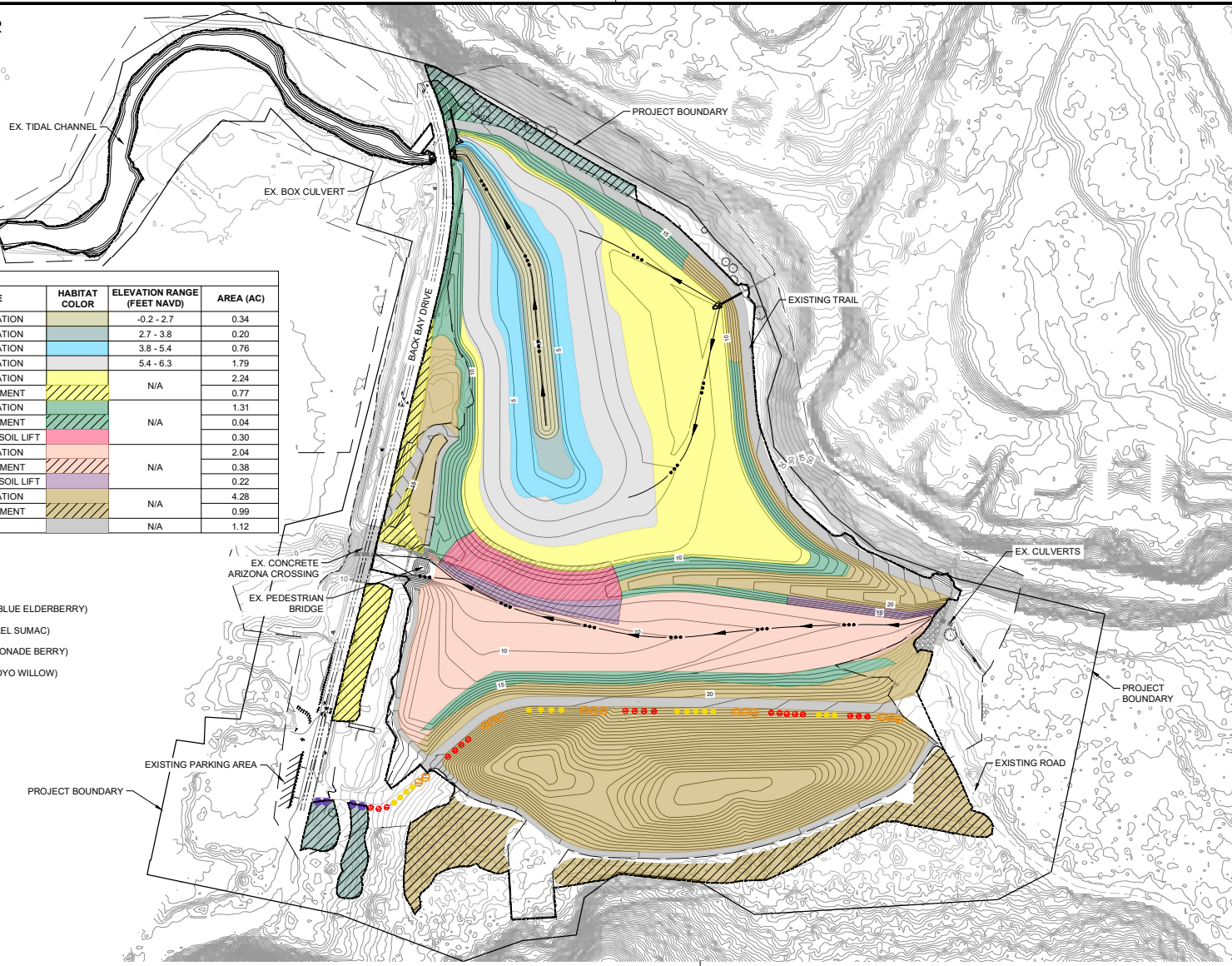
Leilani I. Brown  
City Clerk

Exhibit A-Attachment 2  
Project Map

HABITAT DESCRIPTION	TYPE	HABITAT COLOR	ELEVATION RANGE (FEET NAVD)	AREA (AC)
MUDFLAT	RESTORATION		-0.2 - 2.7	0.34
LOW MARSH	RESTORATION		2.7 - 3.8	0.20
MID MARSH	RESTORATION		3.8 - 5.4	0.76
HIGH MARSH	RESTORATION		5.4 - 6.3	1.79
ALKALI MEADOW	RESTORATION		N/A	2.24
	ENHANCEMENT		N/A	0.77
MULEFAT SCRUB	RESTORATION		N/A	1.31
	ENHANCEMENT		N/A	0.04
	VEGETATED SOIL LIFT		N/A	0.30
WILLOW SCRUB	RESTORATION		N/A	2.04
	ENHANCEMENT		N/A	0.38
	VEGETATED SOIL LIFT		N/A	0.22
COASTAL SAGE	RESTORATION		N/A	4.28
	ENHANCEMENT		N/A	0.99
TRAILS	N/A		N/A	1.12

SHADE TREE PLANTING LEGEND

- SAMBUCUS MEXICANUS (BLUE ELDERBERRY)
- MALOSMA LAURINA (LAUREL SUMAC)
- RHUS INTEGRIFOLIA (LEMONADE BERRY)
- SALIX LASIOLEPSIS (ARROYO WILLOW)



REVEGETATION PLAN

0 50' 100'  
SCALE IN FEET



March 6, 2024

no.	date	by	ckd	description
A	2/25/22	JL	DP	30% DESIGN
B	12/1/22	JL	DP	60% DESIGN
C	3/6/24	JL	DP	90% DESIGN

**PRELIMINARY - NOT  
FOR CONSTRUCTION**



4225 Executive Square, Suite #500  
La Jolla, CA 92037  
858-320-2920

date MARCH 2024	detailed G MATHIASON
designed J LEE	checked D POHL



NEWPORT BEACH, CALIFORNIA  
BIG CANYON NATURE PARK  
PHASE 3 RESTORATION

REVEGETATION PLAN	
project 133465	contract ---
drawing CI104	rev. C
sheet 16	of 27 sheets
file 133465CI104.DWG	

## **1. INVOICING AND PAYMENT**

This is a zero-dollar (\$0.00) contract. The City of Newport Beach, herein after referred to as City has agreed to perform the services described in the Scope of Work at no expense to CDFW. City will be reimbursed in accordance with the terms of the Grant administered by the Conservancy. Because this is a no-cost contract, there will be neither invoicing nor payment between the Parties. City will not submit invoices to CDFW, and the City understands that there will be no payment from CDFW for any goods or services. Notwithstanding the forgoing, in the unlikely event that project costs exceed, or are anticipated to exceed, the amount of available grant funding and contingencies, the parties agree to meet in good faith to decide whether and how to proceed, if at all, with respect to funding the Project.

## **2. CONTRACT WRITTEN PRIOR TO APPROVAL OF THE BUDGET ACT**

- A. It is mutually understood between the parties that this Agreement may have been written prior to approval of the Budget Act for the mutual benefit of both parties in order to avoid program and fiscal delays.
- B. This Agreement is valid and enforceable only if sufficient funds are made available by the Budget Act for the Fiscal Year(s) involved for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Bill or any statute enacted by the Legislature which may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any additional provisions of this Agreement.
- D. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to the Contractor to reflect the reduced amount.

## **3. PROMPT PAYMENT CLAUSE**

Payment will be made in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.

# Modified General Terms and Conditions (GTC 02/2025)

## EXHIBIT C

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. City may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the City, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: City agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. City agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. City agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, City agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: City agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses, made during the performance of the Project by any person, firm or corporation who may be injured or damaged by City in the performance of this Agreement.

Upon completion of performance of the Project and thereafter, State agrees to indemnify, defend and save harmless the City, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by or as a result of the Project, except to the extent of the gross negligence or willful misconduct of City. The foregoing does not include State claims against the City's contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation arising out of the furnishing or supplying work services, materials, or supplies in the performance of the Project.

6. DISPUTES: City may continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the City fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the City under this Agreement and the balance, if any, shall be paid to the City upon demand.
8. INDEPENDENT CONTRACTOR: City, and the agents and employees of Contractor City, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The City shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, City and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. City shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. City and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. City shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. City and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

City shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto, and are to be completed by the contractor awarded the Project by the City.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid City, as provided herein, shall be in compensation for all of City's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California, and any dispute brought relating to this contract shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.
15. ANTITRUST CLAIMS: The City by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the City shall comply with the requirements of the Government Codes Sections set out below.
- a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
  - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
  - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the City shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract City made a commitment to achieve small business participation, then City must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract City made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then City must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime City received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime City; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

21. GENERATIVE AI DISCLOSURE OBLIGATIONS:

- a. The following terms are in addition to the defined terms and shall apply to the Contract:
  - 1) “Generative AI (GenAI)” means an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio that emulates the structure and characteristics of the system's training data. (Gov. Code § 11549.64.)
- b. City shall immediately notify the State in writing if it: (1) intends to provide GenAI as a deliverable to the State; or (2), intends to utilize GenAI, including GenAI from third parties, to complete all or a portion of any deliverable that materially impacts: (i) functionality of a State system, (ii) risk to the State, or (iii) Contract performance. For avoidance of doubt, the term “materially impacts” shall have the meaning set forth in State Administrative Manual (SAM) § 4986.2 Definitions for GenAI.
- c. Notification shall be provided to the State designee identified in this Contract.
- d. At the direction of the State, City shall discontinue the provision to the State of any previously unreported GenAI that results in a material impact to the functionality of the System, risk to the State, or Contract performance, as determined by the State.
- e. If the use of previously undisclosed GenAI is approved by the State, then City will update the Deliverable description, and the Parties will amend the Contract accordingly, which may include incorporating the GenAI Special Provisions into the Contract, at no additional cost to the State.
- f. The State, at its sole discretion, may consider City’s failure to disclose or discontinue the provision or use of GenAI as described above, to constitute a material breach of Contract when such failure results in a material impact to the functionality of the System, risk to the State, or Contract performance. The State is entitled to seek any and all remedies available to it under law as a result of such breach, including but not limited to termination of the contract.

1. **LICENSES AND PERMITS (If Applicable)** ~ The contractor awarded the Project by the City must be an individual or firm licensed to do business in California and must obtain, at his/her expense, all licenses and permits required by law for accomplishing any work required in connection with this Agreement.

For a contractor located within the State of California, a business license from the City/County in which you are headquartered is necessary; however, for a corporation, a copy of its incorporation documents/letters from the Secretary of State's Office can be submitted. For a contractor outside the State of California, it will need to submit to CDFW, a copy of its business license or incorporation papers for its respective State showing that its company is in good standing in that State.

In the event any licenses and/or permits expire at any time during the term of this Agreement, City agrees to provide the California Department of Fish and Wildlife (CDFW) a copy of the renewed licenses and/or permits within thirty (30) days following the expiration date. In the event the City fails to keep all required licenses and permits current, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

2. **RIGHTS IN DATA** ~ The City agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement, are subject to the rights of the State as set forth in this section. The State will have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the City may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.
3. **RIGHT TO TERMINATE** ~ Both parties reserve the right to terminate this agreement subject to 30 days written notice to the other party.

However, the agreement can be immediately terminated for cause. The term "for cause" will mean that either party fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination will be effective as of the date indicated on the notification to the other party.

This agreement may be suspended or cancelled without notice, at the option of the City, if the City or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service.

4. **SETTLEMENT OF DISPUTES** ~ Unless otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which cannot be resolved informally, may be decided by the following two (2) step procedure:
  - a. The City must provide written notice of the particulars of such disputes to the CDFW Contract Manager or appointed representative. The CDFW Contract Manager must respond, in writing, within ten (10) working days of receipt of the written notice of dispute.

Should the City disagree with the CDFW Contract Manager's decision, the City may appeal to the second level. Pending the decision on appeal, the City may proceed diligently with the performance of this Agreement in accordance with the CDFW Contract Manager's decision.

- b. The second level appeal must indicate why the CDFW Contract Manager's decision is unacceptable, attaching it to the City's original statement of the dispute with supporting documents, and a copy of the CDFW Contract Manager's response. This letter of appeal must be sent to the California Department of Fish and Wildlife, Deputy Director, or duly appointed representative. The second level appeal must be filed within fifteen (15) working days upon receipt of the CDFW Contract Manager's decision. Failure to submit an appeal within the period specified will constitute a waiver of all such rights to an adjustment of this Agreement. The Deputy Director, or designee, will meet with the City to review the issues raised. A written decision signed by the Deputy Director or designee, will be returned to the City within fifteen (15) working days of the receipt of the appeal. The decision of the Deputy Director, or designee, will be final.

**5. PROPERTY ACQUISITIONS** ~ Property, as used in this section must include:

- a. **Equipment** – Tangible property (including furniture) with a unit cost of \$5,000.00 or more, and a useful life of four (4) years or more. Actual costs include the purchase price plus all costs to acquire, install and prepare the equipment for its intended use.
- b. **Furniture** – Standard office furnishings including desks, chairs, bookcases, credenzas, tables, etc., with a unit cost of less than \$5,000.00.
- c. **Portable Assets** – Items considered 'highly desirable' because of their portability and value, e.g., calculators, laptops, tablets, mobile phones, flash drives, cameras, and microscopes, etc. (excludes all hardware, software, data processing systems).
- d. **Electronic Data Processing (EDP) Equipment** – All computerized and auxiliary automated information handling including system design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, and data communications, requisite system controls, simulation and all related interactions between people and machines.

The City may purchase property under this Agreement only if specified in Exhibit B titled 'Budget Detail and Payment Provisions'. Any property purchased by the City, with funds provided by CDFW under this Agreement, will be the property of the State during the customary depreciable life thereof. The City must promptly report any such purchase to the CDFW Contract Manager. Should this Agreement be terminated for any reason, or upon expiration and failure to negotiate hereof, all such property will be returned to the State within the timeframe negotiated between the City and the State. Prior written authorization by the CDFW Contract Manager will be required before the City will be reimbursed by CDFW for any property purchases not specified in the Line-Item Budget. The City will provide to the CDFW Contract Manager, all particulars regarding the necessity for such property and the reasonableness of the cost.

Before property purchases made by the City are reimbursed by CDFW, the City must provide the following:

1. paid vendor receipts identifying the Agreement number,
2. purchase date,
3. purchase price,
4. description of the item,
5. serial number,
6. model number, and
7. location, including street address where property will be used during the term of this Agreement.

Paid receipts must be attached to City's invoices. The City must keep adequate and appropriate records of all property purchased with Agreement funds and at the time of purchase, and if any property is purchased with State Funds, prepare a Property Purchased with State Funds report and submit one (1) copy to the CDFW Contract Manager and one (1) copy must be retained by the City.

CDFW reserves the right, at any time, to evaluate the cost of property and reimburse at an amount equal to costs reflected in but not limited to Agreements the State Department of General Services, Procurement Division has negotiated with vendors who supply the same type of property. The City must tag all acquired assets purchased with State Funds. The purpose of tagging assets is to designate the assets as belonging to the State.

Upon termination, expiration or failure to negotiate renewal of this Agreement, all property purchased with State Funds funds must promptly be returned to the State. The City will prepare an inventory of State Furnished Property report and submit to the State and will at that time query the CDFW Contract Manager as to the State's requirements, including the manner and method, in returning said property to the State. Final disposition of such property will be at State expense in accordance with instructions from the CDFW Contract Manager to be issued immediately after receipt of the final inventory.

- 6. LOST, STOLEN or DESTROYED PROPERTY ~** The City must immediately report the loss, theft, or destruction to the local law enforcement agency (or the California Highway Patrol {CHP} if the crime occurs on either state-owned or state leased property) and to the CDFW Contract Manager and prepare a Property Survey Report.

In the case of stolen property, the City must also complete a CHP Report of Crime on State Property (STD 99) form and obtain a copy of the law enforcement agency's report to submit to the CDFW Contract Manager. The City will adjust their property records and retain a copy of the Property Survey Report as documentation.

Losses of State property due to fraud or embezzlement must be reported in the same manner as described above. The City will be charged with any loss and damages to State property due to the City's negligence. The City will, at the request of the State, submit an inventory of property furnished or purchased under the terms of this Agreement. Such inventory will be required not more frequently than annually.

- 7. INCOME RESTRICTIONS ~** The City agrees that, with the exception of grant funding provided by the Conservancy, any refunds, rebates, credits, or other amounts (including any interest

thereon) accruing to or received by the City under this Agreement will be paid by the City to CDFW, to the extent that they are properly allocable to costs for which the City has been reimbursed by CDFW under this Agreement.

8. **CONFIDENTIALITY OF DATA** ~ The City must protect from disclosure all information made available by CDFW. The City will not be required to keep confidential any data or information which is publicly available, independently developed by the City, lawfully obtained from third parties, or subject to disclosure pursuant to law. Written consent of CDFW must be obtained prior to disclosing information that is required to be kept confidential under this Agreement.
9. **RESERVED.**
10. **RESERVED.**
11. **USE OF SUBCONTRACTOR(S)** ~ If the City desires to accomplish part of the services using one (1) or more subcontractors, the following conditions must be met:
  - a. The City must submit any subcontracts to the State for approval prior to starting any of the work, which approval shall not be unreasonably withheld;
  - b. The Agreement between the City and the subcontractor must be in writing;
  - c. The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the Agreement; and
  - d. Upon termination of any subcontract, the State must be notified immediately, in writing.

Further, any subcontract in excess of \$100,000.00 entered into as a result of this Agreement must contain all applicable provisions stipulated in this Agreement.

The City will be responsible for all work performed under this agreement. The State will not entertain requests to arbitrate disputes among subcontracts concerning responsibility for performing any part of the work.

All changes in subcontractual relationship during the term of this agreement must be submitted to the CDFW Contract Manager in writing within 10 working days of said change.

12. **POTENTIAL SUBCONTRACTOR(S)** ~ Nothing contained in this Agreement or otherwise will create any contractual relation between the State and any subcontractor(s) and no subcontract will relieve the City of its responsibilities and obligations hereunder. The City agrees to be as fully responsible to the State for the acts and omissions of its subcontractor(s) and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the City. The City's obligation to pay its subcontractor(s) is an independent obligation from the State's obligation to make payments to the City. As a result, the State will have no obligation to pay or to enforce the payment of any monies to any subcontractor.

13. **TRAVEL AND PER DIEM** ~ The City agrees that all travel and per diem paid its employees under this Agreement will be at rates not to exceed those amounts paid to the non-represented/excluded State employees. No travel outside the State of California will be reimbursed unless prior written authorization is obtained from CDFW.
14. **NOVATION** ~ If the City proposes any Novation Agreement, CDFW will act upon the proposal within sixty (60) days after receipt of the written proposal. The State may review and consider the proposal, consult and negotiate with the City, and accept or reject all or part of the proposal. Acceptance or rejection may be made orally within the sixty (60) day period and confirm in writing within five (5) days. No Novation Agreement will become operative or otherwise binding on the State pursuant to this paragraph in the absence of a formal Novation Agreement amendment which has been approved in accordance with all applicable State policy, laws, and procedures.
15. **INSURANCE** ~ Prior to commencement of the work, the City must furnish CDFW either proof of self-insurance, or certificate(s) of insurance showing that the required insurance is presently in effect. City agrees to make complete copies of its applicable insurance policies available to CDFW upon request. The State will not be responsible for any premiums or assessments on the policy.

**General Provisions Applying to All Policies:**

- 1) Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract. The policy's retroactive date must be shown on the certificate of insurance and must be before the execution date of the contract or before the start of any contract work.
- 2) Policy Cancellation / Termination & Notice of Non-Renewal – City must provide the State within two (2) business days a copy of any notice of Cancellation/Termination or Non-renewal received by City for any of the required insurance policies. In the event City or its contractors fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 3) Deductible – City and its contractors, as applicable, shall be responsible for any deductible or self-insured retention contained within their insurance program.
- 4) Primary Clause – Any required insurance contained in this contract must be primary, and not excess or contributory, to any other insurance carried by the State.
- 5) Insurance Carrier Required Rating – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the City is self-insured for a portion or all its insurance, review of financial information including a letter of credit may be required.

- 6) **Endorsements** – **Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.** This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of City's utilization of subcontractors to complete the contracted scope of work, the general contractor awarded the Project by the City must include all of its subcontractors as insureds under City's insurance or supply evidence of insurance to the State equal to policies, coverages and limits required by this Agreement.

- 7) **Inadequate Insurance** – Inadequate or lack of insurance does not negate the City's obligations under the contract.

**Provider hereby represents and warrants that Provider is currently and will remain, for the duration of this Agreement at Provider's own expense, insured or self-insured against:**

- 1) **Commercial General Liability** – City's general contractor awarded the Project must maintain general liability on an occurrence form with limits not less than \$1,000,000.00 per occurrence for bodily injury and property damage liability combined with a \$2,000,000.00 annual policy aggregate. The policy must include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance must apply separately to each insured against whom claim is made or suit is brought subject to the contractor's limit of liability.

**The policy must be endorsed to include the State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the Contract.**

- 2) **Automobile Liability** – (If applicable per Exhibit A) City's general contractor awarded the Project must maintain motor vehicle liability with limits not less than \$1,000,000.00 combined single limit per accident. Such insurance must cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

**The policy must be endorsed to include the State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the Contract.**

- 3) **Reserved.**

- 4) **Reserved.**

- 5) **Reserved.**

- 6) Pollution Liability – (If applicable per Exhibit A) City's general contractor awarded the Project must maintain pollution liability covering the contractor's liability with limits not less than \$1,000,000.00 per incident, and annual aggregate amount of \$2,000,000.00 which may include Pesticide/Herbicide Applicator Coverage if applicable, or its equivalent.

**The policy must be endorsed to include the State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the Contract.**

- 7) Reserved.

- 8) Reserved.

- 9) Workers Compensation and Employers Liability – City's general contractor awarded the Project must maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of \$1,000,000.00 are required.

The waiver of subrogation endorsement is required when work is performed on State owned or controlled property. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of the State.

When watercraft is/are used in performance of agreement work contractor's workers' compensation policy must be endorsed to include applicable special coverage extensions where applicable.

16. **COMPUTER SOFTWARE (IT SERVICES)** ~ The City certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
17. **TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT** ~ Recipients of a federal contract, grant or other federal funds are prohibited to procure/obtain, and extend, re-new and/or enter into a new contract to procure equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system. Covered telecommunications equipment is equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). For the purpose of public safety, security of government facilities, physical surveillance of critical infrastructure and other nation security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahura Technology Company (or any subsidiary or affiliate of such entities) is prohibited. 2 CFR 200.216.
18. **INSPECTION** ~ The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the State of the premises of the City or a subcontractor, the City must provide and require their subcontractor(s) to provide all reasonable facilities and assistance for the

safety and convenience of the State representatives in the performance of their duties. All inspections and evaluations must be performed in such a manner as will not unduly delay the work.

19. **FORCE MAJEURE** ~ Neither party will be liable to the other for any delay in or failure of performance, nor will any such delay in or failure of performance constitute default, if such delay or failure is caused by 'Force Majeure'. As used in this section, 'Force Majeure' is defined as follows: Acts of war, acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.
20. **FORCED, CONVICT AND INDENTURED LABOR** ~ No foreign-made equipment, materials, or supplies furnished to the State pursuant to this Agreement may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a bid to the State or accepting a purchase order, the City agrees to comply with this provision of the Agreement. This requirement does not apply to public works (construction) Agreements.
21. **CONTRACT STAFF REQUIREMENTS** ~ The City represents that it has or will secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel must not be employees of or have any contractual relationship with the California State Department of Fish and Wildlife or any other governmental entity.
22. **EVALUATION OF CONTRACTOR (CONSULTANT AGREEMENTS ONLY)** ~ Performance of the City, under this Agreement, will be evaluated. The evaluation must be prepared on a Contract/Contractor Evaluation Sheet (STD 4) and maintained in the Agreement file.

If the City did not satisfactorily perform the work or service, a copy of the negative evaluation form will be submitted to the City and the Department of General Services, Legal Division, within fifteen (15) days of the completion of the evaluation. The City will have thirty (30) days to prepare and send statements defending its performance under the Agreement. The evaluation of the City will not be a public record.

23. **REQUIREMENTS FOR LEGAL AGREEMENTS ONLY** ~ In accordance with Public Contract Code § 10353.5, the City must:
  - ❖ Agree to adhere to legal costs and billing guidelines designated by the State;
  - ❖ Adhere to litigation plans designated by the State;
  - ❖ Adhere to case phasing of activities designated by the State;
  - ❖ Submit and adhere to legal budgets as designated by the State;
  - ❖ Maintain legal malpractice insurance in an amount not less than the amount designated by the State;
  - ❖ Submit to legal bills legal bill audits and law firm audits if requested by the State or by any legal cost control providers retained by the State for this purpose; and
  - ❖ Submit to a legal cost and utilization review, as determined by the State.
24. **EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS** ~ On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the

U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine City is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide City advance written notice of such termination, allowing City at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.