



Due to the risk of COVID-19 transmission, and related local and State guidelines regarding social distancing and meetings of government bodies, this meeting will be held remotely.

To join the meeting, click on:

<https://smcgov.zoom.us/j/96125722473>

or call by phone: 669-900-6833, ID # 96125722473

**San Mateo County Flood & Sea Level Rise  
Resiliency District  
BOARD OF DIRECTORS**

**County Supervisors:**

District 3 Don Horsley  
At-Large Dave Pine - **Chair**

**City Representatives:**

North Donna Colson  
Central Diane Papan  
South Lisa Gauthier  
Coast Debbie Ruddock – **Vice Chair**  
At-Large Maryann Moise Derwin

## **AGENDA**

**April 26, 2021**

**4:00 PM**

1. **Roll Call**
2. **Public Comment** Persons wishing to address the Board on District-related matters not on this Agenda may speak for up to two minutes; comments on Agenda items shall be heard during that item for up to two minutes.
3. **Action to Set the Agenda and Approve the Consent Agenda**
  - A. Approve the Minutes of the March 22, 2021 District Board Meeting
4. **Regular Business**
  - A. Adopt Resolution 2021-04-26 approving and adopting the Plans and Specifications for the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project
  - B. Authorize the Chief Executive Officer to execute Agreement 2021-04-26-GRC with Granite Rock Company to construct the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project
  - C. Update on the activities of the Board of Directors Strategic Planning Committee\*
5. **Chair's Report\***
  - A. Appointment of CEO Performance Review Committee
6. **CEO's Report\***
7. **Board Member Reports and Items for a Future Agenda\***
8. **Adjournment**

\* There is no written staff report for this item

**Meeting information, and public access and communications**

- During the meeting, public comment can be submitted at the appropriate time via Zoom Chat or by raising your hand, speaking if joining by phone, or email to [board@oneshoreline.org](mailto:board@oneshoreline.org) prior to 12:00 pm on the meeting day; please indicate the agenda item to which your comment applies and it will be read or summarized at the meeting by the Board Clerk.
- If you require assistance to participate in the meeting or wish to submit written communication to all Board Members regarding the meeting, please contact the Clerk of the Board by 9:00 am on the day of the meeting.
- Public records relating to an open session item on the agenda are available at least 72 hours prior to a Regular Board meeting or at least 24 hours prior to a Special Board meeting, when these records are distributed to Board members. Public records are available at the District office at 1700 South El Camino Real, Suite 502, San Mateo, CA 94402 and at [www.oneshoreline.org](http://www.oneshoreline.org). To receive these documents electronically, please email [board@oneshoreline.org](mailto:board@oneshoreline.org).

**SAN MATEO COUNTY**  
**FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT**  
**Board of Directors meeting held remotely via Zoom**  
**March 22, 2021**  
**DRAFT - MINUTES**

**1. Roll Call**

Chair Pine called the meeting to order at 4:02 p.m. via Zoom video conference software. Assistant Clerk of the Board of Supervisors Sukhmani Purewal took the roll call.

Directors Present:

Dave Pine, Representing Board of Supervisors, At Large (Chair)  
 Donna Colson, Representing Northern San Mateo County cities  
 Maryann Moise Derwin, Representing San Mateo County cities at-large  
 Lisa Gauthier, Representing Southern San Mateo County cities  
 Don Horsley, Representing Board of Supervisors, District 3  
 Diane Papan, Representing Central San Mateo County cities

Director Absent: Debbie Ruddock, representing Pacific coastside San Mateo County cities (Vice Chair)

Staff Present:

Len Materman, Chief Executive Officer  
 Brian Kulich, Esq., Legal Counsel  
 Lucy Dong, Finance Manager  
 Colin Martorana, Associate Project Manager  
 Makena Wong, Associate Project Manager  
 Sukhmani Purewal, Assistant Clerk of the Board of Supervisors

**2. Public Comment**

None

**3. Action to Set the Agenda and Approval the Consent Agenda**

- A. Approve the Minutes of the February 22, 2021 District Board Meeting
- B. Authorize the Chief Executive Officer to Enter Into an Agreement with the Town of Colma Regarding Maintenance of Portions of the Colma Creek Channel
- C. Adopt a Resolution 2021.3.22 establishing the San Mateo County Flood and Sea Level Rise Resiliency District Salary Schedule for Fiscal Years 2020-2021 and 2021-2022

Motion made by Director Gauthier and seconded by Director Horsley to set the agenda and approve consent agenda items:

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, and Pine

Noes: None

Absent: Ruddock

Vote: 6-0-1

No written or verbal public comments.

#### 4. **Regular Business**

- A. Discuss the status of the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project, including the permit from the S.F. Bay Regional Water Quality Control Board

Mr. Materman provided the following updates in the context of needing to now begin construction to provide flood protection and fulfill permit and funding requirements:

- District advertised construction bid documents to pre-qualified prospective contractors on March 11, 2021; and
- Funding and land easements are complete and encroachments permits are in process with the U.S. Fish & Wildlife Service and Caltrans; and
- Environmental permits from CDFW, BCDC, USFWS, NMFS are complete; and
- Two permits are still pending by Regional Water Quality Control Board and U.S. Army Corps of Engineers.

Other speakers on this item were: Don Horsley, Donna Colson, Lisa Gauthier, Dave Pine, Brian Kulich.

Director Debbie Ruddock joined the virtual meeting at 4:24 p.m.

Public Speaker(s): None

- B. Authorize the CEO to execute a contract with CPM Associates, Inc. for Construction Management Services for the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project

Mr. Len Materman provided the following updates:

- District released a RFP on February 10 for Construction Management (CM) services; and
- On March 5, 2021, District received proposals from six firms and on March 10, 2021, all six were interviewed; and
- Staff recommends awarding a CM contract to CPM Associates, Inc. for not-to-exceed amount of \$797,809, which will be paid by the Project MOU between the District, County of San Mateo, cities of Menlo Park and Redwood City, and Town of Atherton.

Public Speaker(s): None

Motion made by Director Horsley and seconded by Director Papan to authorize the CEO to execute a contract with CPM Associates, Inc.:

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Pine, Ruddock

Noes: None

Absent: None

Vote: 7-0-0

#### 5. **Chair's Report**

Chair Pine mentioned that the Board's *ad hoc* Strategic Planning Committee consisting of Directors Don Horsley, Diane Papan and Dave Pine have been looking at various funding mechanics for the District. One idea that looks very promising is a consideration of a parcel tax, which will be put on a ballot by the County. This tax would fund District operations and projects wildfire mitigating efforts. This topic will be included on the next Board meeting agenda.

Vice Chair Debbie Ruddock talked about AB 339, which requires local and state agencies to provide substantial translation services and in-person accommodations for their meetings. The bill could have major cost impacts at the local level and we should monitor it.

Public Speaker(s): None

6. **CEO's Report**

Updates were also provided by Mr. Materman on the following topics:

- Upcoming climate resilience forums in partnership with the League of Women Voters include:
  - April 8 with the area of focus on Belmont, Foster City, Redwood Shores, San Carlos, and San Mateo;
  - April 29 with the area of focus on Redwood City (South of Whipple), Menlo Park, and East Palo Alto; and
  - June 3 with the focus on Wildfire Risk throughout the entire County.
- Mr. Materman talked about plans to move forward with investing District Funds.
- Mr. Materman mentioned that he has participated in meetings with state legislators hosted by San Mateo County.

Public Speaker(s): None

7. **Board Members Reports and Items for a Future Agenda\***

Director Donna Colson thanked both Chair Dave Pine and Len Materman for making themselves available to the City of Burlingame regarding discussion related to potential development along the City's Bay shoreline.

An item flagged for a future agenda included an update on the activities of the *ad hoc* Strategic Planning Committee.

8. **Adjournment**

The meeting adjourned at 4:53 p.m.

**San Mateo County Flood and Sea Level Rise Resiliency District  
Agenda Report**

**Date:** April 26, 2021  
**To:** San Mateo County Flood and Sea Level Rise Resiliency District Board of Directors  
**From:** Len Materman, CEO  
**Subject:** Adopt draft Resolution 2021-04-26 approving and adopting the Plans and Specifications for the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project

---

**Recommendation:**

That the San Mateo County Flood and Sea Level Rise Resiliency District (“District”) Board of Directors (“Board”) adopt draft Resolution 2021-04-26 approving and adopting Plans and Specifications for the District’s first major construction project, the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project (“Project”).

**Background and Discussion:**

At the February 22, 2021 Board meeting, the Board authorized the Chief Executive Officer (“CEO”) to finalize and advertise the Project’s Plans and Specifications for public bids, and report back to the Board with recommendations on awarding a contract for the Project once bids were received and confirmed.

On March 11, 2021, the Plans and Specifications were advertised for construction bids, then on April 12, 2021 bids were received, and now the CEO reports back to the Board with the Project’s final Plans and Specifications, in advance of construction. In the next agenda item for this Board meeting, the District CEO will recommend to the Board the award of a construction contract.

Government Code Section 830.6 provides public agencies with a design immunity defense for any public project designed and constructed by the public agency, provided that the design was approved in advance of the construction by the agency’s legislative body or by an employee authorized by the legislative body to give such design approval.

Thus, to obtain the protections of design immunity provided in Government Code Section 830.6, staff recommends that the Board adopt draft Resolution 2021-04-26 (attached to this staff report), which approves and adopts the Project’s Plans and Specifications to be adhered to in letting and performing the work under the construction contract for the Project.

**Fiscal Impact on District Resources:**

There is no fiscal impact on District resources related to the adoption of the Project’s Plans and Specifications.

**Attachments:**

Draft Resolution 2021-04-26

The advertised Plans and Specifications may be found on the Project webpage:  
[OneShoreline.org/projects/bayfront-atherton-flood-protection](https://OneShoreline.org/projects/bayfront-atherton-flood-protection).



**DRAFT** RESOLUTION NO. 2021-04-26

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT  
APPROVING AND ADOPTING THE BAYFRONT CANAL & ATHERTON CHANNEL  
FLOOD PROTECTION AND ECOSYSTEM RESTORATION PROJECT'S  
PLANS AND SPECIFICATIONS**

WHEREAS, the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project (“Project”), which is the District’s first major construction project, will reduce the risk of flooding through construction of an underground culvert that diverts excess flow from the existing Bayfront Canal tide structure into former salt ponds now owned and managed by the U.S. Fish and Wildlife Service; and

WHEREAS, the Board at its February 22, 2021 meeting authorized and directed the Chief Executive Officer to proceed with finalizing the Project’s Plans and Specifications and advertise for construction bids, and to report back to the Board with recommendations on awarding a construction contract for the Project once bids were received and confirmed; and

WHEREAS, the Project’s Plans and Specifications, which included environmental regulatory permits and land rights agreements, are available at OneShoreline.org, have been finalized and advertised for bids, and a result of that process is that a responsive low bidder has been determined; and

WHEREAS, the Board and public have had the opportunity to review the Plans and Specifications; and

WHEREAS, construction of the Project has not yet commenced; and

WHEREAS, Government Code Section 830.6 provides public agencies, including the District, with a design immunity defense for any public project designed and constructed by the public agency, provided that the design was approved in advance of the construction by the agency’s legislative body or by an employee authorized by the legislative body to give such design approval; and

WHEREAS, the Board wishes for the District to obtain the immunities provided in Government Code Section 830.6 for the Project.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves and adopts the Project’s Plans and Specifications to be adhered to in letting and performing the work under the construction contract for the Project. The approval granted by this Resolution is intended to avail the District of the immunities set forth in Government Code Section 830.6.

PASSED AND ADOPTED this 26th day of April, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
Clerk of the Board of Directors

\_\_\_\_\_  
Chair of the Board of Directors

**San Mateo County Flood and Sea Level Rise Resiliency District  
Agenda Report**

**Date:** April 26, 2021  
**To:** San Mateo County Flood and Sea Level Rise Resiliency District Board of Directors  
**From:** Len Materman, CEO  
**Subject:** Authorize the Chief Executive Officer to execute draft Agreement 2021-04-26-GRC with Granite Rock Company to construct the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project

---

**Recommendation:**

That the San Mateo County Flood and Sea Level Rise Resiliency District (“District”) Board of Directors (“Board”) authorize the Chief Executive Officer (“CEO”) to enter into draft Agreement 2021-04-26-GRC (“Agreement”) with Granite Rock Company (“GRC”) to construct the Bayfront Canal and Atherton Channel Flood Protection and Ecosystem Restoration Project (“Project”) for an amount not to exceed \$6,864,983 through a term ending almost 11 months (330 days) after the contract begins.

**Background and Discussion:**

On March 11, 2021, District staff published the bid documents for construction of the Project, distributing them to the ten construction firms that were pre-qualified through a public process conducted by the District earlier this year. On April 12, 2021, five prospective firms submitted sealed bids that were then opened and read aloud at an online bid opening, with GRC recognized as the apparent low bidder. No subsequent bid protests were received by the District.

Following the bid opening, District staff and our Construction Management Firm, CPM Associates, reviewed the low bids and determined GRC’s submission met the criteria to be deemed responsive, and communicated our intent to proceed. GRC was established in Northern California over 120 years ago, and is well-qualified for this project, having performed similar construction-related services around the San Francisco Bay Area.

Pursuant to the Agreement, GRC will construct the Project as described in the Project’s bid documents, which includes: constructing a diversion structure on the bank of the Bayfront Canal; furnishing and installing two concrete box culverts under Marsh Road; installing an outfall structure in, and excavating the Pond S5 Forebay that lies within the U.S. Fish and Wildlife Service’s Ravenswood Ponds Complex; and on-site environmental mitigation improvements. With Board authorization for the CEO to execute the attached draft Agreement 2021-04-26-GRC, the District, its partners, consultants, and GRC will swiftly move forward with breaking ground on the Project in May so that it can be completed by January 2022.

**Fiscal Impact on District Resources:**

Draft Agreement 2021-04-26-GRC establishes a not-to-exceed amount of \$6,864,983. This amount is within the amount estimated for construction and contingency included in the Project’s Memorandum of Understanding among the District and our partners – Redwood City, Menlo Park, Atherton, and County of San Mateo – that was approved by the Board on November 9, 2020.

**Attachment:**

Draft Agreement No. 2021-04-26-GRC

**AGREEMENT BETWEEN THE  
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT  
AND GRANITE ROCK COMPANY**

**THIS AGREEMENT**, made and entered into this 26<sup>th</sup> day of April, 2021, by and between the SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT, State of California, hereinafter called the “District” and Granite Rock Company, hereinafter called the “Contractor,”

**W I T N E S S E T H:**

**THAT**, for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

**I. Services to be performed by Contractor:** The Contractor will at his own proper cost and expense, do all the work and furnish all the labor, materials, equipment and utilities necessary to perform and complete in good workmanlike and substantial manner, and to the satisfaction of the Chief Executive Officer of the District, hereinafter called “CEO,” for the project

**BAYFRONT CANAL AND ATHERTON CHANNEL  
FLOOD PROTECTION AND ECOSYSTEM RESTORATION PROJECT**

**TOTAL PROJECT APPROXIMATELY 1,500 FEET IN LENGTH  
WITH APPURTENANT WORK THERETO  
IN SAN MATEO COUNTY**

**DISTRICT PROJECT NO. FB020  
PROJECT FILE NO. 2101**

and all in strict accordance with the Plans, Specifications, Notice to Contractors, Special Provisions and Proposal on file in the office of the CEO of the District, which said Plans, Specifications, Notice to Contractors, Special Provisions and Proposal are hereby specifically referred to and by such reference made a part thereto.

**II. Payments:** The Contractor will receive and accept and the District will pay the prices specified in the Contractor's Proposal, dated April 8, 2021 on file in the office of the CEO of the District and by reference made a part of this Agreement, as full compensation for furnishing all labor, materials and equipment for doing all the work contemplated and embraced in this Agreement; the Contractor assumes any and all loss or damage arising out of the nature of the work aforesaid, which may arise or be encountered in the prosecution of the work until its

acceptance by the District, and for all risks of every description connected with the work, and also assumes any and all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and to the Plans, Specifications and Special Provisions and requirements of the CEO hereunder. The Contractor shall guarantee all materials and workmanship for a period of one (1) year from date of acceptance of the project by the CEO of the District. Any defects due to faulty materials, method of installation or workmanship within that period shall be repaired by the Contractor promptly upon notice by the CEO, at the expense of the Contractor.

It is distinctly understood that the estimate set forth in the Notice to Contractors is only an approximation of the amount of work to be done and the District does not expressly or by implication agree that the actual amount of work will correspond with the amount set forth therein, and payment shall be made to the Contractor as above set forth.

Payment to the Contractor shall be made progressively by the District for the work and materials furnished under this Agreement in accordance with the provisions of Section 9 of the Special Provisions portion of these Contract documents.

**III. Term:** Time is of the essence in the Agreement, and the work to be performed hereunder shall be completed within

**THREE HUNDRED THIRTY (330) CALENDAR DAYS**

from the date of commencement of the work, which commencement shall be within **TEN (10) CALENDAR DAYS** after receiving Notice to Proceed from the CEO.

**IV. Relationship of Parties:** Contractor agrees and understands that the work/services performed under this Agreement are performed as independent contractor and not as an employee of the District and that Contractor acquires none of the rights, privileges, powers, or advantages of District employees.

**V. Merger Clause:** This Agreement, together with the Notice to Contractors, the Contractor's Proposal, the Plans, Specifications and Special Provisions and the Payment and Performance Bonds form the Contract, and said documents incorporated herein by reference become as fully a part of the Contract as if hereto attached or herein set forth in full. The Standard Specifications of the District, which, except as specifically noted in the District Contract documents and specifications, are identical with the Standard Specifications of the State of California, Department of Transportation, dated May 2006, and are on file with the CEO of

the District, are incorporated herein by reference as a part of the Contract documents and shall apply to this project except where the terms of this Agreement or other Contract documents are inconsistent therewith, in which case the provisions of this Contract shall prevail.

This Agreement constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**VI. Surety Bonds:** The performance of this Contract is secured by a "Payment" Surety Bond in the sum of one hundred percent (100%) of the Contract bid, and a "Performance" Surety Bond in the sum of one hundred percent (100%) of the Contract bid. "Payment" and "Performance" Surety Bonds have been approved as to form by District Counsel, of which samples of same are attached as Appendix C in the Special Provisions.

**VII. Insurance:** The Contractor shall not commence work under this Contract until Contractor has obtained all insurance required under this paragraph and such insurance has been approved by the District, nor shall the Contractor allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained. The Contractor shall furnish District with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract. Certificates of Insurance shall be filed with the District within **TEN (10) WORKING DAYS** after award of the contract. These certificates shall specify or be endorsed to provide that **THIRTY (30) CALENDAR DAYS'** notice must be given, in writing, to District of any pending change in the limits of liability or of any cancellation or modifications of the policy.

**A. Worker's Compensation and Employer's Liability Insurance**

The Contractor shall have in effect during the entire life of this Agreement, Worker's Compensation and Employer's Liability Insurance providing full statutory coverage; and in case any work is sublet, the Contractor shall require all subcontractors similarly to provide Worker's Compensation and Employer's Liability Insurance to full statutory limits. In signing this Agreement, the Contractor makes the following certifications, required by Section 1861 of the Labor Code:

"I am aware of the provisions of Section 3700 of the Labor Code

which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this Contract.”

**B. Liability Insurance**

The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance as shall comply with Section 7-1.12, “Indemnification and Insurance,” of the Standard Specifications and protect him/her and any subcontractor performing work covered by this Contract, from claims for damages for bodily injury, including accidental death, as well as from claims for property damage including third party property damage, to include coverage on property in the care, custody and control of the Contractor, and also including coverage for what are commonly known as the “X, C and U” exclusions (having to do with blasting, collapse and underground property damage), which may arise from the Contractor's operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be **TWO MILLION DOLLARS (\$2,000,000)** combined single bodily injury and property damage for each occurrence. The District, Cities of Menlo Park and Redwood City, Town of Atherton, County of San Mateo, Cargill, Inc., and Cargill Point, LLC (collectively, the “Collaborative”), and their officers, agents, servants and employees, shall be named as additional insureds on any such policies of insurance, which shall also contain a provision stating that the insurance afforded thereby to the Collaborative and their officers, agents, servants and employees, shall be primary insurance to the full limits of liability of the policy, and that if the Collaborative or their officers and employees have other insurance against a loss covered by such policy, such other insurance shall be excess insurance only.

**Such statements, mentioned above, shall be included on a separate endorsement to be submitted to the District with the Certificate of Insurance.**

**Such insurance shall include:**

- 1) Comprehensive General Liability ..... \$2,000,000**
- 2) Motor Vehicle Liability Insurance..... \$2,000,000**
- 3) Professional Liability.....\$2,000,000**

C. In case of the breach of any provision of this Article, the District, at its option, may take out and maintain at the expense of the Contractor, or subcontractor, such insurance as the District may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be due, or become due, to the Contractor, under this Agreement.

D. Hold Harmless

The Contractor's attention is directed to Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications.

The provisions contained in Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications of the State of California, Department of Transportation, shall be applicable with the understanding that where said provisions specifically refer to the State of California, a department or division of the State or an official, officer or employee of the State, said provision shall be interpreted to refer to the Collaborative, and all officers, agents, servants and employees thereof connected with the work, including but not limited to the CEO and Directors of the District, their duly authorized representatives, other appropriate department, division, official, officer or employee of the Collaborative.

The provisions of Section 7-1.12A, "Indemnification," of the Standard Specifications are superseded by the following:

"To the full extent permitted by law, Contractor shall indemnify and save harmless the District its officers, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of:

1. Injuries to or death of any person, including Contractor, its officers, employees and servants, or
2. Damage to any property of any kind whatsoever and to whomsoever belonging, or
3. Any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with applicable laws, or
4. Any other loss or cost resulting from the contractor's negligent or reckless acts or omissions or willful misconduct in connection with the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damages for which the District has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend, as set forth In Section 2778 of the California Civil Code.

The obligations set forth in this Section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement.”

**E. Compensation**

All insurance required by the paragraphs of this section shall be obtained and maintained by the Contractor at Contractor’s own expense and District shall not compensate Contractor for said insurance expenses other than as they are included in the Contract prices the District pays for the various items of work.

**F.** Nothing herein contained shall be construed as limiting in anyway the extent to which the Contractor may be held responsible for payments of damages resulting from his operation.

**VIII. Prevailing Wages:** Contractor hereby agrees to pay not less than prevailing rates of wages, which are effective on the date the Notice to Contractors is issued for each craft or type of workman or mechanic needed to execute the Agreement as provided for by the District for the performance of public work, and be responsible for compliance with all the provisions of the California Labor Code, Article 2-Wages, Chapter 1, Part 7, Division 2, Section 1770 *et seq.* and Section 1810 *et seq.*, and particularly Section 1775 and 1776(a) thereof. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the CEO of the District, and available at [www.dir.ca.gov/oprl](http://www.dir.ca.gov/oprl) or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

Additionally, pursuant to State Senate Bill SB 854 (Stat. 2014, chapter 28), effective January 1, 2015:

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**IX. California Labor Code:** The Contractor expressly covenants and agrees to comply with all the provisions of the Labor Code of the State of California limiting the hours of labor on public works to eight (8) hours during any one calendar day, and forty (40) hours in any one calendar week, requiring the payment of not less than the prevailing wage rates, and further agrees to the forfeitures provided for in said Labor Code and as set forth in Section 7, “Legal Relations and Responsibility,” of the Standard Specifications and all amendments thereto, in the event of a violation of any of the provisions thereof during the course of execution of this Agreement.

The Contractor expressly agrees to be responsible for compliance with all the provisions of Sections 1776 and 1777.5 of the California Labor Code.

**X. Non-Discrimination and Other Requirements:**

a. General Non-discrimination:

No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy, childbirth or related conditions), medical condition (including cancer-related), military service, or genetic information. Contractor shall ensure full compliance with Federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and subcontractors under this Agreement.

b. Equal Employment Opportunity:

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement.

Contractor’s equal employment policies shall be made available to District upon request.

c. Section 504 of the Rehabilitation Act of 1973:

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the

benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Discrimination Against Individuals with Disabilities:

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

e. History of Discrimination:

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide District with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the District.

f. Reporting; Violation of Non-discrimination Provisions:

Contractor shall report to the CEO the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based

discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the CEO of the District, including but not limited to:

- i) Termination of this Agreement;
- ii) Disqualification of the Contractor from bidding on or being awarded a District contract for a period of up to 3 years;
- iii) Liquidated damages of \$2,500 per violation; and/or
- iv) Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the CEO of the District.

To effectuate the provisions of this paragraph, the CEO of the District shall have the authority to:

- i) Examine Contractor's employment records with respect to compliance with this paragraph;
- ii) Offset all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and District.

Contractor shall report to the CEO of the District the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide District with a copy of its response to the Complaint when filed.

**XI. Termination of Agreement:** The Agreement may be terminated by the District pursuant to Section 8-1.11 "Termination of Contract" of the Standard Specifications.

**XII. Compliance with Laws:** The Contractor shall comply with all existing and future State and Federal and regulating laws and all ordinances and regulations of the District which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

Controlling Law: The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

**XIII. Contract Assignability**: Neither party to the Agreement shall assign the Agreement or sublet it as a whole without written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the District. The Contractor shall neither mortgage nor convey title to equipment or material to be used in this work, without the written permission of the District.

**XIV. COVID-19**: This Provision relates to issues associated with the Novel Coronavirus Disease 2019 (COVID-19) and shall supersede any other conflicting sections or provisions of this Agreement and its attachments. The ongoing COVID-19 pandemic may impact the District's ability to proceed with this Project. Should future Health Orders or the District Board of Directors/CEO directives preclude the Project from proceeding as scheduled, the District reserves the right to:

- Cancel the Project, terminate the Contractor's work once the Contractor has safely secured the work area, and compensate the Contractor for work completed and materials purchased prior to cancellation of the Project and labor and materials, as approved by the CEO, required to safely secure the work area such that work can be discontinued on the Project; **or**
- Reach a mutually agreeable extension with the Contractor for completion of the Project such that the work can resume after being halted provided it complies with all Health Orders issued by the Health Officer of the County of San Mateo or the State of California and as approved by the District Board of Directors/CEO.

It is the Contractor's obligation and responsibility to ensure that all work associated with this Project complies with all current Orders of the Health Officer of the County of San Mateo related to the Novel Coronavirus Disease 2019 (COVID-19). The District assumes no responsibility for work performed by Contractor that is not in compliance with all current Orders. The Contractor is advised to review the Orders of the Health Officer of the County of San Mateo, which can be found at the following link:

<https://www.smchealth.org/post/health-officer-statements-and-orders>

**XV. Contract Materials**: The District hereby promises and agrees with the said

Contractor to employ and does hereby employ the said Contractor to provide the materials, unless otherwise specified, and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth, and the said parties for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.

**XVI. Retention of Records, Right to Monitor and Audit:**

- A. Contractor shall maintain all required records for three (3) years after the District makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the District, a Federal grantor agency, and the State of California.
- B. Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies and as required by the District.
- C. Contractor agrees upon reasonable notice to provide to the District, to any Federal or State department having monitoring or review authority, to District's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**XVII. Notices:** Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when both: (1) transmitted via facsimile to the number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

**In the case of District, to:**

Len Materman, Chief Executive Officer  
San Mateo County Flood and Sea Level Rise Resiliency District  
1700 South El Camino Real, Suite 502  
San Mateo, California 94402  
Email: info@onshoreline.org

**In the case of Contractor, to:**

(Contractor Name)  
(Contractor Address)  
(City, State Zip)  
Facsimile:  
Email:

**XVIII. Contract Amount and Change Orders:**

**A. Contract Amount**

The amount payable to Contractor under the terms of this agreement is Six Million, Eight Hundred Sixty-Four Thousand, Nine Hundred Eighty-Three Dollars and Zero Cents (\$6,864,983.00).

**B. Change Orders**

The Board of Directors has not authorized the CEO to execute change orders to modify the scope of work provided under this Agreement. The Board of Directors has directed that any payments in excess of the amount authorized by the Board of Directors (\$6,864,983.00) will require additional approval of the Board of Directors.

**XIV. Proprietary Rights and Confidentiality:** The requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.

**XV. Electronic Signatures:** The parties wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law.

**XVI. Payment of Permits/Licenses:** Contractor bears responsibility to obtain any license, permit, or approval required from any agency for services to be performed under this Agreement at Contractor's own expense prior to commencement of said services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

**IN WITNESS WHEREOF**, the parties to these presents have hereunto set their hands the year and date first above written.

**“District”**

San Mateo County  
Flood and Sea Level Rise Resiliency District

BY: \_\_\_\_\_  
**Len Materman, Chief Executive Officer**

**“Contractor”**

\_\_\_\_\_  
Name of Contractor

BY: \_\_\_\_\_  
(Authorized Signature and Seal of Bidder)