CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
TERRAPHASE ENGINEERING, INC.
FOR
FOR ENVIRONMENTAL DESIGN SERVICES FOR A TREATMENT WETLAND AT THE CITY OF SAN LEANDRO WATER POLLUTION CONTROL PLANT

THIS AGREEMENT for consulting services is made by and between the City of San Leandro ("City") and Terraphase Engineering ("Consultant") (together sometimes referred to as the "Parties") as of October 15, 2019 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on October 15, 2021, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

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

1.4 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Consultant's obligations hereunder.

1.5 Public Works Requirements. Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services

constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit D.

1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

1.7 **Public Works Contractor Registration**. Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed $789,036, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- Amount billed for each top-level Task and Task 4.2a and 4.2b as defined in Exhibit A, Scope of Services;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- Invoices shall categorize the expenses on the invoice with these categories:
    1. Project Management
    2. Planning and Design
    3. Permitting Agency Consultation
    4. CEQA/City Council Approval
- Invoices shall include a 10% final payment withholding;

- The Consultant's signature;

- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed $2,690. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to City that such insurance is in effect. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than $1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Consultant, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Consultant shall submit the following:

a. Certificate of Liability Insurance in the amounts specified in the section; and

b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Consultant, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than $2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than $1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property

resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant.

c. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.

d. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.2.4 **Submittal Requirements.** To comply with Subsection 4.2, Consultant shall submit the following:

a. Certificate of Liability Insurance in the amounts specified in the section;

b. Additional Insured Endorsement as required by the section;

c. Waiver of Subrogation Endorsement as required by the section; and

d. Primary Insurance Endorsement as required by the section.

4.3 Professional Liability Insurance.

4.3.1 General Requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than $2,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed $150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.

d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.3.4 Submittal Requirements. To comply with Subsection 4.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.

4.4 All Policies Requirements.

4.4.1 **Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Consultant by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 **Submittal of Proof of Insurance Coverage.** All certificates of insurance and original endorsements effecting coverage required in this Section 4 must be electronically submitted through the City's online insurance document management program, PINS Advantage. Contractor shall comply with all requirements provided by City related to the PINS Advantage program.

4.6 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Refer to the attached Exhibit C, which is incorporated herein and made a part of this Agreement.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 60 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but are not limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Consultant to maintain shall be made available for

inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds $10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

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

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

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

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous 12 months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

At City's sole discretion, Consultant may be required to file with the City a Form 700 to identify and document Consultant's economic interests, as defined and regulated by the California Fair Political Practices Commission. If Consultant is required to file a Form 700, Consultant is hereby advised to contact the San Leandro City Clerk for the Form 700 and directions on how to prepare it.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Hayes Morehouse ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:
Lucas W. Paz
Principal Hydrologist
Terraphase Engineering Inc.
1404 Franklin Street, Suite 600
Oakland, CA 94612
Lucas.paz@terraphase.com

Any written notice to City shall be sent to:

Hayes Morehouse
Water Pollution Control Plant Administrative Analyst
3000 Davis Street
San Leandro, CA 94577
hmorehouse@sanleandro.org

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

_____ Seal and Signature of Registered Professional with report/design responsibility.

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, C and D represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A	Scope of Services
Exhibit B	Compensation Schedule & Reimbursable Expenses
Exhibit C	Indemnification
Exhibit D	California Labor Code Section 1720 Information

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

10.14 Certification per Iran Contracting Act of 2010. In the event that this contract is for
one million dollars ($1,000,000.00) or more, by Consultant's signature below Consultant certifies that Consultant, and any parent entities, subsidiaries, successors or subunits of Consultant are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

Jeff Kay, City Manager

Attest:

Leticia I. Miguel, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

593-52-276-5120

Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

Per Section 10.7:
☐ Form 700 Not Required
☑ Form 700 Required

Debbie Pollart, Public Works Director

TERRAPHASE ENGINEERING, INC

Lucas Paz, Principal Hydrologist

1000002673

Consultant's DIR Registration Number (if applicable)

EXHIBIT A

SCOPE OF SERVICES

Task Authorization
Tasks 1.1 through 4.1 below are authorized upon issuance of the Notice to Proceed. The remaining tasks may be authorized following Task 3, when conceptual design is completed. In addition, the scope of Task 4.2 may be modified to include fewer regulatory agencies pending meetings in September or October, 2019. Tasks will be authorized via written work orders from City staff.

Task Durations
The Terraphase Team commits to the listed task durations if the project proceeds as described below. However, timelines may need to be extended for circumstances outside of Terraphase's control, such as delays from regulatory agencies.

TASK 1 – PROJECT ADMINISTRATION AND MANAGEMENT
(24 MONTHS, PROJECT DURATION)
TASK 1.1 – PROJECT INITIATION PLANNING AND PROJECT KICK-OFF MEETING

The Terraphase Team will review and use available site background documents, initial conceptual design elements, and the Project objectives to prepare for the initial Project kick-off meeting. We will provide a detailed workflow diagram for Phase I and Phase II within 10 working days from issuance of the Notice to Proceed identifying key decision points and deliverables, as well as an associated updated schedule.
The Terraphase Team Project manager (Lucas Paz) and key technical leads (Scott Wallace, Hans Kramer and Megan Stromberg) will prepare an outline presentation and participate in an initial Project kickoff meeting with the City and Project stakeholders (timing to be determined by the City in consultation with SFBRA). The kickoff meeting will be held by, at the latest, the second month of the Project. The meeting will include an overview of the proposed work plan, discussion of existing site constraints and proposed site data acquisition, discussion of the initial conceptual design, and consideration of potential design alternatives and permitting challenges and strategy. The meeting will identify remaining steps required to collect necessary baseline information to support the design development and to address known data gaps.
DELIVERABLES:

- Kick-off meeting presentation
- Workflow diagram for Phase I and Phase II (through Task 6)

TASK 1.2 – PROJECT MANAGEMENT, COMMUNICATION AND COST CONTROL
The Terraphase Team will prepare for and lead bi-weekly or monthly Project update conference calls with the City after the Project is underway and throughout the Project. Lucas Paz will serve as the overall Project manager and will be assisted by Hans Kramer, the engineering design

development lead, and by Morgan O'Hare and Tomer Schetrit for general engineering, project management, and administrative support.

The following Project management activities will be conducted throughout the duration of the Project:

- Supervise, coordinate, and monitor design development for conformance with standard engineering practices and other governing agency requirements.
- Notify the City of any changes in scope or budget as soon as possible, and propose actions, if necessary, to correct these changes.
- Provide responsive communication to the City by being available by phone or e-mail and responding in a timely fashion. Bi-weekly/ monthly Project status conference calls are proposed.
- Maintain Project files and provide monthly progress reports and invoices to the City, over the duration of the Project, consistent with SFBRA's Measure AA administration requirements and the City of San Leandro's contract requirements. Monthly reporting will summarize work completed during the monthly invoicing period, including deliverables, an invoice detailing costs and staff hours by task, and a budget tracking table showing progress by task.

We will maintain project cost control using our internal project management and cost accounting system database (Ajera). This accounting system provides real-time updates on Project costs and expenses to track spending and to ensure that the work scope is completed within budget.

DELIVERABLES:

- As-needed bi-weekly/monthly progress meetings or conference calls
- Invoices with monthly progress updates for each task, including work by subconsultants

TASK 2 – DATA & INFORMATION COLLECTION (TASK DURATION: 27 WEEKS)

TASK 2.1 – REVIEW OF SITE PHYSICAL AND ENVIRONMENTAL DATA AND PREVIOUS PROJECT FINDINGS

The Terraphase Team will review relevant site background data and reports (i.e., geotechnical and environmental data), available drawings of the existing wastewater treatment plant facilities, plant discharge data, and other supporting information. We will also review detailed design documents, findings and lessons learned from previous treatment wetland projects, including the Oro Loma Horizontal Levee Project, the Discovery Bay Treatment Wetland Project, the Los Prados Wetland Project, and the numerous treatment wetlands projects designed and previously implemented by the Terraphase Team members. The site background data and findings from previous treatment wetland projects will be used to inform the design development. Terraphase's Geotechnical Engineer (Jeff Raines) will review existing geotechnical studies to determine the availability of information necessary to complete the design and to identify data gaps. The initial information required to inform the design process includes

topographic survey data, site soils/geology data, infrastructure locations, wastewater effluent quality, and land ownership details.

DELIVERABLES:

- Summary compilation of previous data, design drawings/details and report sources collected and reviewed to support the design development.

TASK 2.2 – COLLECTION OF SITE TOPOGRAPHY AND UTILITY DATA

Towill, Inc., in coordination with the lead Terraphase Civil Engineer (Hans Kramer) will conduct professional surveying services to augment existing topography and investigate property boundary, utility, easement and land ownership constraints. Towill previously performed surveying and mapping at the San Leandro WPCP in 2009 and 2016, and at the neighboring basin in 2008. Detailed site topographic and boundary surveying will support development of the base map for the construction design drawings, will determine and verify specific tie-in locations, and will identify specific landscape features such as existing levee cross-sections. A combination of global positioning system (GPS) technology and conventional land surveying equipment and techniques will be employed to establish horizontal and vertical control. Utility locations will be field surveyed and reflected in the updated topographic mapping. Property corners and easements will be researched and identified. Results of a title search will be provided identifying easements, covenants, use restrictions, or other encumbrances on the property. A detailed topographic survey of the Site will be performed including additional coverage in adjacent areas immediately outside the Project limit of work. The field survey will pick up all the surface and visible underground improvements throughout the Site to facilitate the Project design and to support potential future site improvements. Utility line locating and/or potholing will be provided to accurately identify existing utilities throughout the site. We will survey all locations/alignments, rims, grates and invert elevations of all visible sanitary sewer and storm drain structures within the Site, and immediately upstream and downstream of the existing infrastructure inlet and outlet points, based on the established datum and local control points.

DELIVERABLES:

- Summary of ground (photo) control coordinates and brief descriptions of the points including the primary control monuments used as the basis for our horizontal and vertical surveys.
- Condition of Title Report
- Set of 1,000 dpi copies of the aerial photography site imagery in JPEG format
- Site topography, utility and property survey in AutoCAD format (including boundary lines and easements) [AutoCAD drawing files and/or MicroStation design files containing the digital planimetric/topographic map and digital terrain data]
- Existing conditions site plan and base map for construction design drawings

TASK 2.3 – ASSESSMENT OF SITE OPPORTUNITIES AND CONSTRAINTS AND EXISTING DATA GAPS

The Terraphase Team key technical leads identified above under Task 1.1 (see Organizational Chart for roles), and our Geotechnical Engineer will identify site physical, chemical, permitting and operational constraints that will influence the proposed treatment wetland design and will consider alternative layout and excavation/grading options. We will identify site-specific opportunities to maximize treatment effectiveness for the proposed treatment wetland system and potential habitat creation options. Based on the site data collected by Fugro to date, we understand the existing site soils are partly impacted with lead, chromium, and total petroleum hydrocarbons (TPH). Additional soil characterization sampling requirements will be assessed; limited additional targeted soil sampling may be necessary to optimize the final Project design. Recommendations pertaining to the potential need for additional location-specific sampling will be provided to the City. Site utility constraints will also be evaluated through review of design or as-built drawings for existing facilities, and using targeted utility locating services.
Additional soil or groundwater sampling would be outside the scope of this contract but can be conducted if necessary and authorized by a change order.
The basin will likely need to be lined with either an impermeable or low-permeability liner to restrict or limit the potential for mobilizing and transporting existing soil contaminants in the basin sediments. This assumes that existing sediments/sub-surface soil will be stabilized to provide a suitable base for the proposed liner installation. The proposed lining of the pond is consistent with the design of other shallow Free Water Surface (FWS) open-water treatment wetlands, including the Discovery Bay pilot project and Prado Wetlands demonstration project. Excavation and disturbance of existing sediments should be minimized, and we understand that the City's initial design objective is to minimize the need for sediment disposal or import of substantial fill material.
DELIVERABLES:

- Technical memo outlining results of the site opportunities and constraints assessment, with recommendations pertaining to the potential need for additional location-specific sampling

TASK 2.4 – OPTIMIZATION OF CONCEPTUAL DESIGN AND WETLAND TREATMENT FEASIBILITY AND CONSTRUCTABILITY ASSESSMENTS (TASK DURATION: 8 WEEKS)

The Terraphase Team key technical leads will build on the initial conceptual design and identify potential alternative Project layouts and potential treatment benefits associated with alternative design options intended to maximize denitrification, and removal of pharmaceutical/synthetic trace organic compound contaminants, and also with respect to the Project's wildlife habitat and vegetation restoration objectives. A minimum of three conceptual design alternatives will be presented that will vary in cost, permitting complexity, treatment wetland process design, and required long-term maintenance. Each design alternative will be intended to provide a balance of water quality and habitat enhancement. We intend to maximize the system performance through an iterative design process given the relatively small Project footprint. We understand the WPCP's current average dry-weather discharge is approximately 4.8 million gallons per day, with a daily total nitrogen loading rate about of 2,100 pounds per day.

We will develop a customized treatment wetland design approach to significantly reduce existing nitrogen loading rates. An adaptive management plan will be developed to support system operations and to determine optimized influent flow rates and an associated flow schedule for the system throughout the year (during dry and wet-weather periods).
Since steeper side slopes (3:1) can reduce the amount of water infiltration, storage and filtering through surrounding soils and minimize the potential extent of vegetated habitat area, it is preferable to construct terraced bioreactors with specific areas of flatter slope designed to provide more fringe habitat. The identification of an optimal underlying side slope angle for the proposed terraced basin perimeter levees/berms will be presented with respect to site constraints and Project objectives. The design will be developed to enhance both treatment functionality and desired ecotone/wildlife habitat.
DELIVERABLES:

- Technical memo and supporting conceptual design drawings presenting recommended design alternatives and treatment optimization options

TASK 2.5 – DESIGN REVIEW MEETINGS AND INCORPORATION OF CONSTRAINTS AND OPPORTUNITIES ASSESSMENT FINDINGS AND INPUT FROM KEY STAKEHOLDERS TO SUPPORT DESIGN OPTIMIZATION

The Terraphase Team technical leads will work closely with the City to solicit input and feedback from the local community, regulatory agencies, and interested stakeholders. We will participate in a series of design review meetings with a diverse group of technical experts and stakeholders to inform the design of the full-scale multi-purpose facility to polish nitrified secondary treated wastewater effluent and create novel ecotone habitat in an existing storage basin. We recommend including key resource agency representatives in one or more of these meetings to support evaluation of potential Project alternatives and to gain consensus on the design approach. The Terraphase Team key technical leads will participate in up to three full-day design review workshops with the City, agency representatives and expert advisers as needed to discuss site conditions, constraints, and to refine the Project conceptual design.
DELIVERABLES:

- Design review meeting presentations and compilation of supporting materials for each meeting

TASK 2.6 – PREPARE PRELIMINARY DESIGN REPORT FOR PREFERRED ALTERNATIVE RECOMMENDATION

The Terraphase Team will prepare the Preliminary Design Report, including recommendations for the final preferred conceptual design for the Project based on the input gained from the design review meetings, agency communications and wetland system engineering evaluations. The Preliminary Design Report will summarize the findings in Task 2, incorporating input from the Project team, stakeholders, and expert advisors. The Preliminary Design Report will be drafted by Lucas Paz, Hans Kramer, Scott Wallace and Jeff Raines with support from Kelly Lam and Morgan O'Hare. After completion of the Preliminary Design Report, the Terraphase Team will meet with the City to confirm the preferred alternative layout, construction sequencing, and proposed construction materials/methods.

DELIVERABLES:

- Preliminary Design Report

TASK 3 – DEVELOP 30% PLANS, SPECIFICATIONS AND ESTIMATES (PS&E) [TASK DURATION: 12 WEEKS]

TASK 3.1 – PREPARATION OF 30% DESIGN PLANS/ CONSTRUCTION DOCUMENTS

The Terraphase Team will advance the preferred alternative to develop design materials representing 30% Project definition, consisting of grading plans, landscape drawings, utility and design drawings and details. All plan drawings, details and sections will be developed in digital format using AutoCAD. Kelly Lam will serve as lead CAD designer under the supervision of Hans Kramer, Lucas Paz, Scott Wallace, and Jeff Raines.

The Terraphase Team will develop grading plans showing plan and profile of the proposed treatment wetland and embankments, utility alignments, and detailed construction sections. Re-vegetation plans and associated landscape drawings and details will also be developed for selected areas in the Project site. The landscaping design will involve development of a customized plant palette and planting plan for the site to support hand-planting of native species, to be developed with expert input. The customized planting plan and an approved list of recommended native plant species for the Project will be developed by our landscaping expert, Megan Stromberg (professional landscape architect and wetland revegetation specialist), detailing areal placement of plant installations and seeding specifications for the respective Project area to address both the wetland treatment and habitat creation objectives. Terraphase will prepare a preliminary list of drawings to be prepared to illustrate the basic scope and approach prior to producing the 30% plan set. Drawings will be prepared in AutoCAD, following agreed-upon drafting standards. We will provide design drafts provided to the City for review and comment, incorporating City feedback into the design documents prior to presentation.

The Terraphase Team will also prepare and conduct presentations to review the draft design documents with Project proponents, at which point stakeholder consultation and feedback will be garnered. Drafts will be provided at least fourteen days prior to corresponding presentations. Terraphase will incorporate feedback from Project stakeholders into subsequent drafts and materials.

The Terraphase Team will produce the completed 30% design with corresponding visual exhibits and present to Project proponents, other stakeholders, and/or regulators, at up to two meetings, to inform next steps for the Project.

DELIVERABLES:

- Preliminary Review Drafts of 30% Plans
- 30% Design Plans/Construction Documents

TASK 3.2 – PREPARATION OF PRELIMINARY SPECIFICATIONS AND COST ESTIMATES

Terraphase will prepare an outline of specifications and a preliminary bid schedule in tandem with the 30% design development. Technical specifications will be prepared in an agreed-upon

standard format. Progress submittals will also include an updated engineer's estimate of likely quantities and costs, and an updated construction schedule estimate. Cost estimates shall meet Class 3, AACE International Classification System requirements for associated accuracy.
DELIVERABLES:

- Preliminary Specifications and Cost Estimates

TASK 4 – PERMITTING SUPPORT
TASK DURATION: 28 WEEKS
TASK 4.1 – COORDINATION WITH THE CITY TO SUPPORT INITIAL INFORMAL CONSULTATION WITH RESOURCE AGENCIES

We understand that the City will lead the development of a permitting strategy and identify required permits in consultation with permitting agencies. The Terraphase Team permitting specialists (Ross Dobberteen, Dan Sidle and Lucas Paz) will support development of the permitting strategy by providing strategic planning and technical support including required surveys and technical studies needed to meet permitting requirements.
We will provide the City with technical support and review comments on draft CEQA documentation prepared by the City (we understand the City anticipates leading efforts to develop an Initial Study/Mitigated Negative Declaration, with support and review from the Terraphase Team). We will also provide public hearing support and participation during the CEQA public review period.
We will coordinate directly with the City to initiate and support informal consultation with resource agencies and prepare for participation in the San Francisco U.S. Army Corps of Engineers (Corps) Interagency Meeting. The Terraphase Team will prepare preliminary Project concept plans/exhibits and a brief presentation for the Corps sponsored Interagency Meeting to gather initial permitting agency concerns and Project recommendations.
We will focus on demonstrating to the agencies how the Project has been designed to eliminate or reduce as many potential environmental impacts as possible through the development of an environmentally superior Project alternative that incorporates agency suggestions learned during pre-consultation efforts.
Intentional habitat improvements, including native vegetation enhancement and bioengineering treatments, are often utilized to minimize Project impacts. Permit applications and follow-up submittals will be developed to highlight how impacts will be minimized and we will work with agencies to facilitate permit application approvals that are contingent upon follow-up modifications to the Project design and/or Project schedule to minimize impacts. Demonstrating the ability to incorporate regulator feedback has been a key factor in delivering a successful permitting process for our clients, and we believe this approach will ultimately help strengthen the City's relationship with the regulators for the proposed Project.
DELIVERABLES:

- Preliminary Project concept plans/exhibits and associated presentation materials for the Corps sponsored Interagency Meeting

TASK 4.2 – PREPARATION OF SUPPORTING TECHNICAL STUDIES

The City will lead development of a permitting strategy and identify required permits in consultation with permitting agencies. Terraphase will provide technical support, conduct surveys, and prepare special studies required to meet permitting requirements.
Pending consultation with permitting agencies, Terraphase will prepare one or more surveys, studies, or permit applications, as identified in the permitting strategy. This may include but are not limited to:

- Jurisdictional Delineation
- Biological Assessment (combined for US Fish and Wildlife Service and National Marine Fisheries Service)
- Cultural Resources Evaluation
- US Army Corps of Engineers 404 Application
- Regional Water Quality Control Board 401 Application, NPDES permit amendment, and supporting technical documents, including but not limited to a Mixing Zone Study regarding designation of a new point of discharge, consistent with the 2005 Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California
- Bay Conservation and Development Application
- and CA Department of Fish and Wildlife 1602 and CESA Application and supporting documents, including but not limited to vegetation and wildlife surveys.

Terraphase will provide the City with technical support and review of CEQA documentation. Terraphase will support and review the City's efforts to City anticipates leading efforts to develop an Initial Study/Mitigated Negative Declaration.
Studies and support toward the following permits are included in the optional 4.2b of the cost estimate. Application support for all other required permits are included in 4.2a.

- CDFW 1602 Streambed Alteration Agreement application
- Army Corps of Engineers Nationwide Permit #27 – "Aquatic Habitat Restoration". Section 401 or 404 Alternatives Analysis are also included if needed.
- CDFW Section 2801 Incidental Take Permit

DELIVERABLES:

- Draft technical studies and permit applications submitted to the City for review
- Report of Waste Discharge Technical Report and Application

TASK 5 N/A – Mistakenly omitted from Request for Proposals
TASK 6 – 60% PS&E (TASK DURATION: 14 WEEKS)
The Terraphase Team will revise the 30% design phase submittal to prepare a 60% design phase submittal. Reporting for the 60% design phase will include a revised outline of specified and a

preliminary bid schedule. Cost estimates will meet Class 2, AACE International Classified System requirements for associated accuracy.
We will provide design drafts to the City for review and comment, incorporating City feedback into the design documents prior to presentation. The Terraphase Team will produce and conduct presentations to review drafts with Project proponents, at which point stakeholder consultation and feedback will be solicited.
Drafts will be provided at least fourteen days prior to corresponding presentations. The City and key Project stakeholders will provide feedback that the Terraphase Team will incorporate into subsequent drafts and materials.
The Terraphase Team engineering design leads will produce the completed 60% design with corresponding visuals and present to with Project proponents, other stakeholders, and/or regulators, at up to two meetings, to inform next steps for the Project.
DELIVERABLES:

- Drafts of 60% Plans, Specifications and Estimates
- Final 60% Plans, Specifications and Estimates

TASK 7 –100% PS&E (TASK DURATION: 12 WEEKS)
The Terraphase Team will revise the 60% design submittal to prepare 100% construction design documents (drawings, cost estimate, specifications, bid schedule, etc.). Cost estimates will be prepared in accordance with Class 1, AACE International Classification System requirements.
The final design will minimize the disturbance to existing wetland areas/vegetation to avoid impacts to special status species.
Specific requests from regulatory agencies garnered during initial agency consultation meetings will be carefully evaluated and incorporated into the final improvement plans, including the detailed grading plans, landscape/revegetation plans, erosion control plans, and associated sections, details, and specifications.
The intent is to design the Project in a manner that provides the necessary and desired improvements but avoids potential environmental impacts to the greatest extent possible. The design will create and maintain targeted wetland habitats that sustain viable wildlife populations and locally relevant special- status species to be compatible with adjacent land uses and wildlife habitats. The design will provide for public educational opportunities, in accordance with Project objectives to support community outreach and exploration of sea level rise adaptation, integration with the Bay Trail, and initiation of a longer-term shoreline resiliency and ecological restoration elements to improve shoreline ecology and protect critical infrastructure. We understand that subsequent phases of the Project include planning, design, fundraising, and implementation of a larger shoreline resiliency and restoration effort.
We will provide design drafts to the City for review and comment, incorporating City feedback into the design documents prior to presentation. We will produce and conduct presentations to support final draft design review with Project proponents, at which point final stakeholder consultation and feedback will be collected.
Drafts will be provided at least fourteen days prior to corresponding presentations. The Project team will provide feedback that the Consultant will incorporate into the final design documents.

DELIVERABLES:

- Drafts of 100% Plans, Specifications and Estimates
- Final 100% Plans, Specifications and Estimates

TASK 8 – COMPLETE/FINALIZE PERMITTING & TECHNICAL ASSISTANCE

(TASK DURATION: 24 WEEKS)

Task 8 is contingent on final permitting requirements for the Project, established under Task 4. The Terraphase Team assumes that a Corps Clean Water Act Section 404 Permit application will likely be required for work influencing wetlands/waters of the United States/State. Based on the draft permit application developed under Task 4 and pending final impact analysis, the Section 404 permit application will be finalized. Based on the current site conditions and initial Project description it is assumed that a Nationwide Permit will be sufficient. If Project implementation will result in impacts to federally listed species, we will prepare a request for consultation under Section 7 of the Endangered Species Act with the USFWS and/or the NMFS. The Terraphase Team permitting specialists (Ross Dobberteen, Dan Sidle and Lucas Paz) will prepare and submit a final request for a Clean Water Act Section 401 Water Quality Certification based on the initial draft application and supporting materials developed under Task 4. Also, a Notice of Intent will be prepared to conduct work under the General Construction Activity Storm Water Permit. A Storm Water Pollution Prevention Plan (SWPPP), a condition of that General Permit which details required erosion and sediment control measures to reduce water quality impacts during construction, will also be prepared by a Terraphase Qualified SWPPP Developer.

The Terraphase Team permitting specialists will provide permitting support, based on feedback and information obtained under Phase I and II tasks.

The Terraphase Team will also provide as-needed technical assistance and capacity to the City in order to advance future planning and design for additional nature-based shoreline infrastructure design, permitting, and construction best practices, as the Project scope and funding allow.

DELIVERABLES:

- Preparation of final permit applications will be submitted to the City for review.

TASK 9 – BIDDING AND CONSTRUCTION SUPPORT SERVICES

(TASK DURATION: 16 WEEKS)

The Terraphase Team construction-period support specialists (Lucas Paz, Hans Kramer, Jeff Raines, Morgan O'Hare, and Tomer Schetrit) will assist the City during the bidding period and prepare a bid schedule and an Invitation for Bid (IFB) package.

To support the construction bidding process, Terraphase will prepare bid documents, including administrative requirements, bid forms, design drawings, and construction specifications to solicit competitive bids for the subject work. The 100% design drawings and specifications will be supported with the preparation of bid clarifications, design addendums, and additional details needed to support construction. This task includes support of the development of the IFB package and additional construction bid support services. IFB components will be determined in coordination with the City and are assumed to include general information and

bid submission requirements, description/scope of services, design plans and specifications, description of quality/experience requirements, service and warranty terms, Project-specific environmental permitting requirements, basis for award, bid schedule/bid pricing sheet, and required pricing format. Requirements for specific construction activities will be outlined in the IFB, including site preparation, utility relocation, grading and soil management, utility construction, planting, etc. Following finalization of the IFB, Terraphase can support distribution of bid documents to local regionally based contractors deemed suitable for performing the scope of work based on previous similar experience.

Although the Project will be advertised for bids, all questions concerning the intent to bid shall be referred to the City for resolution. Terraphase will provide bidder and construction assistance from the date bids are advertised through pre-bid and pre-construction phases, field construction management, and Project completion. Terraphase can provide the City with construction staking services, via separate proposal if desired, upon approval of the final construction documents. We will assist the City with the pre-bid meeting/site walk, bid evaluations and contractor selection, review and approval of change orders and requests for payment, and can provide a proposal for preparation of Record/As-Built Drawings as well. Our construction-period assistance services include responding to Requests for Information (RFIs), review of Contractor submittals and preparation of responses, PS&E interpretation, change order review, and other associated construction support. We will document the construction progress and attend/conduct bi-weekly construction meetings, and pre-final and final Project close-out inspections.

The Terraphase construction support team will also conduct construction-period field services for the Project. Services will include coordination and meetings with the City and the selected construction Contractor, construction observation, geotechnical data review and site inspection, SWPPP inspection and permit management by a Qualified SWPPP Practitioner or their designee, punch list preparation, and other supporting actions. Our construction support services cost estimate assumes that compaction testing will be done by others. We can provide compaction control testing services if requested.

Our proposed construction period support services include costs to cover an assumed 6-month construction period to support the Project earthwork construction and associated utility installation. Our construction period services schedule supports completion of earthwork & utilities. Based on similar projects we believe it is likely that an additional 12 months would also be necessary to support planting and vegetation maintenance activities; the additional time that may be required for planting support is dependent on the development of the final planting plan and associated Project phasing. The City may request this additional service via a change order or under separate contract.

DELIVERABLES:

- IFB package
- Contractor submittal review and preparation of submittal responses
- RFI response and design clarifications
- SWPPP inspections and reporting
- Daily construction observation logs

*The construction period schedule indicated supports completion of earthwork & utilities; based on similar projects, we expect an additional 12 months to support planting and vegetation maintenance activities

TASK 10 – NITRIFICATION SYSTEM DESIGN

This task will be completed concurrently with other design tasks (Tasks 3, 6 and 7). The specific subtasks will be authorized at the same time as the relevant other tasks.

The City Water Pollution Control Plant (WPCP) effluent requires upstream nitrification before the plant effluent is routed to the proposed 4.3-acre denitrification treatment wetland system. The assessment/screening of a range of available nitrification technologies, conceptual system design and sizing options, and site configuration layouts will be explored with the City. The system/technology evaluation, assessment of a range of conceptual design options, comparison of construction/installation costs, and final engineering design/preparation of construction documents for the recommended upstream nitrification process facility will be conducted in accordance with the following Scope of Work.

Among the various options that will be evaluated, Terraphase will consider application of both Moving Bed Biofilm Reactor (MBBR) or Membrane Aerated Biofilm Reactor (MABR) technologies. Both processes are well suited for nitrification and organic load reduction (BOD/COD) and provide higher nitrogen removal performance than conventional wastewater treatment systems. These processes combine attributes of activated systems with fixed film treatment systems to achieve effective nitrification in a small footprint. Both processes are also considered relatively easy to operate and the MABR passive aeration system consumes significantly lower energy compared to other treatment technologies.

The final system sizing and design of the nitrification process facility will meet or exceed the capacity requirements for the selected proportion of WPCP effluent flows that will be treated by the proposed 4.3-acre basin bioreactor treatment wetland system. The Terraphase Team will begin the design development process by evaluating and comparing the various options under sub-task 1 and sub-task 2 below.

Deliverables:

1. Assessment of Site Opportunities & Constraints, Technology Options and Development of Preliminary Nitrification Facility Conceptual Design and Sizing Options
2. Incorporation of Opportunities & Constraints Assessment Findings, Comparison/Screening of Facility Sizing and Configuration Options to Support Final Selection and Conceptual Design Optimization of the Nitrification Facility
3. Preparation of Nitrification Facility Basis of Design Technical Memorandum
4. Preparation of 30% Design Plans/Construction Documents, Specifications and Construction cost Estimates for the Nitrification Facility
5. Preparation of 60% Design Plans/Construction Documents, Specifications and Construction Cost Estimates for the Nitrification Facility
6. Preparation of 100% Design Plans/Construction Documents, Specifications and Construction Cost Estimates for the Nitrification Facility

Assumptions

- The development of initial design concepts, screening of alternatives and sizing evaluations will include assessment of both small-capacity stand-alone systems (approximately 1 MGD) intended to support limited WPCP effluent flow rates and larger-scale facilities that could support treatment of the entire WPCP effluent flow stream (approximately 5 MGD). Sub-tasks 3-6 in this proposal that support final engineering design and preparation of construction documents are only applicable if the reduced-capacity system option is selected.
- If the reduced-capacity nitrification system is selected, the proposed facility will be located in the area adjacent to the WPCP drying beds immediately upstream of the 4.3-acre treatment wetland basin.
- If a larger-scale nitrification facility for treating the full WPCP effluent flow stream is selected requiring integration with the existing plant infrastructure, the engineering design and construction documents for such a system would be managed by the City WPCP as a separate scope of work and contract.
- The incoming WPCP effluent flow stream to the nitrification process facility for the reduced-capacity system option would be subject to temporary shutdowns in order to support system operation and maintenance.
- An additional comprehensive geotechnical investigation will not be required to support the design of the stand-alone smaller capacity nitrification process facility; we assume that sufficient existing geotechnical data would be available for the location where the nitrification facility will be constructed.
- Because the nitrification system will be constructed adjacent to the wetlands, high-resolution topographic survey data will be collected for this site at the same time as for the treatment wetland pond location.
- Integration of system controls with existing plant SCADA and site-specific structural engineering analysis is not included at this time.
- Implementation of bench-scale testing and/or pilot studies for potential nitrification processes or technologies is not included.

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

Payments for each task defined in Exhibit A will be made in accordance with Table 1, not to exceed a total of $789,036. Budget may be transferred between tasks upon written authorization from the Project Administrator.

Table 1. Task-Specific Budgets

Task 1.1 Project Initiation Planning and Kick-off Meeting	$8,004
Task 1.2 Project Management, Communication, and Cost Control	$16,415
Task 2.1 Review of Site Physical and Environmental Data and Previous Project Findings	$11,243
Task 2.2 Collection of Site Topography and Utility Data	$32,095
Task 2.3 Assessment of Site Opportunities and Constraints and Existing Data Gaps	$15,292
Task 2.4 Optimization of Conceptual Design and Wetland Treatment Feasibility and Constructability Assessments	$23,226
Task 2.5 Design Review Meetings/Incorporation of Assessment Findings/Input from Key Stakeholders	$22,353
Task 2.6 Prepare Preliminary Design Report for Preferred Alternative Recommendation	$25,394
Task 3.1 Preparation of 30% Design Plans/ Construction Documents	$47,999
Task 3.2 Preparation of Preliminary Specifications and Cost Estimates	$24,591
Task 4.1 Coordination with the City to Support Initial Informal Consultation with Resource Agencies	$8,065
Task 4.2a Preparation of Supporting Technical Studies	$105,243
Task 4.2b Potential Additional Supporting Technical Studies	$103,640
Task 6 60% PS&E	$53,159
Task 7 100% PS&E	$28,446
Task 8 Complete/ Finalize Permitting and Technical Assistance	$24,684
Task 9 Bidding and Construction Support Services	$140,732
Task 10 Nitrification System Design	$98,455
TOTALS - ALL TASKS	**$789,036**

Hourly and Reimbursement Rates

Work toward the above tasks will be according to the rates in Table 2. Items marked as "lump" payments will be made according to the schedule detailed in the project proposal.

Table 2. Hourly and reimbursable rates

Terraphase Labor Rates		
Position	Unit	Rate
Principal	hour	214.20
Senior Associate	hour	198.00
Associate	hour	183.60
Senior Project	hour	172.80
Project	hour	157.50
Senior Staff	hour	137.70
Staff II	hour	120.60
Staff I	hour	99.90
Administrator	hour	75.60
Technician II	hour	104.40
Technician I	hour	67.50
Subcontractor Labor and Expense Rates		
Utility Locator	Lump	3,000.00
Naturally Wallace - Wallace	hour	190.00
Naturally Wallace - Doiron	hour	140.00
Naturally Wallace - Phasey	hour	125.00
Naturally Wallace Expenses	lump	2,730.00
LSA - Principal	hour	243.00
LSA - Project Manager	hour	157.00
LSA - Senior Advisor	hour	253.00
LSA - Wetlands Specialist	hour	137.00
LSA - Biologist/Permitting	hour	106.00
LSA - Associate Planner	hour	162.00
LSA - Princ. Cultural Rscs Mgr	hour	203.00
LSA - Senior Cultural Rscs Mgr	hour	122.00
LSA - Graphics	hour	147.00
LSA - Graphics	hour	106.00
LSA - Technical Editor	hour	106.00
LSA - Word Processing	hour	106.00
LSA - Production	hour	106.00
LSA - Wetlands Specialist	hour	208.00
LSA Expenses	lump	967.78
Towill	Lump	21,720.00
Megan Stromberg	Hour	125.00
Megan Stromberg expenses	Lump	636.00
Direct Cost Handling (10% of subcontractor expenses)	Lump	21,027
Expenses		

Reproduction	Lump	300.00 per time up to $1,350
Site visit mileage	Mile	0.58 up to $1,340
Total Expenses		$2,690

EXHIBIT C

INDEMNIFICATION

A. Consultant shall, to the extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages, including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.

B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages arising from the professionally negligent acts, errors or omissions of Consultant, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the sole negligence or willful misconduct of the City.

D. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault.

EXHIBIT D

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subcontractors shall forfeit as a penalty to the City $25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.

B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be

based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

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