



*EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY*

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

SPECIAL MEETING

Monday, August 25, 2008

5:30 pm

City of Pittsburg City Hall

1st Floor Conference Room

65 Civic Center Drive, Pittsburg, CA

AGENDA

- 1) Introductions**
- 2) Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 3) Consider the following actions to implement the Vasco Caves-Souza 1 HCP Pond Project (Project):**
 - a) ACCEPT** report from staff on the opening of sealed bids submitted for the Project (scheduled for 2 p.m. on August 25)
 - b) AUTHORIZE** Conservancy staff to execute an agreement with the East Bay Regional Park District (District) authorizing the Conservancy to construct the Project on District lands. Pursuant to this Agreement, **AUTHORIZE** payment to the District of \$5,000 upon execution of the Agreement for construction inspection services and \$25,000 upon completion of Project construction for District's management costs during initial five-year management period.
 - c) APPROVE** the General Conditions, Supplementary Conditions, Project Plans, Technical Specifications and all other bid and contracting documents for the Project presented in the bid package.
 - d) AUTHORIZE** the Executive Director of the Conservancy to sign Agreement with the lowest qualified bidder for the Project and **AUTHORIZE** construction of the project.
- 4) Consider approving Resolution 2008-02 authorizing application for and acceptance of grant funds from the California Department of Fish and Game for wetland restoration activities.**

5) Closed Session: Conference With Real Property Negotiators

Property: APN#080-080-002 (Morgan Territory Road, Contra Costa County)

Agency Negotiators: John Kopchik

Negotiating Parties: East Contra Costa County Habitat Conservancy and East Bay Regional Park District

Under negotiation: payment terms

6) Adjourn.

If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Community Development Department at 925-335-1227.

The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at 925 332-1227 at least 6 hours before the meeting.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 25, 2008
TO: Governing Board
FROM: John Kopchik, Executive Director
SUBJECT: Authorization to Construct Vasco Caves Souza I – HCP Pond Project

RECOMMENDATION

Approve the following actions to implement the Vasco Caves Souza I – HCP Pond Project (Project):

- a) ACCEPT report from staff on the opening of sealed bids submitted for the Project (scheduled for 2 p.m. on August 25).
- b) AUTHORIZE Conservancy staff to execute an agreement with the East Bay Regional Park District (District) authorizing the Conservancy to construct the Project on District lands. Pursuant to this Agreement, AUTHORIZE payment to the District of \$5,000 upon execution of the Agreement for construction inspection services and \$25,000 upon completion of Project construction for District’s management costs during initial five-year management period.
- c) APPROVE the General Conditions, Supplementary Conditions, Project Plans, Technical Specifications and all other bid and contracting documents for the Project presented in the bid package.
- d) AUTHORIZE the Executive Director of the Conservancy to sign Agreement with the lowest qualified bidder for the Project and AUTHORIZE construction of the project.

RECOMMENDATION

As reported at previous Governing Board meetings, Conservancy staff, consultants and staff at the District have been working hard to prepare two pilot restoration projects for construction this fall in order to achieve a critical jump start on the Conservancy’s wetland restoration program. The Vasco Caves Souza I HCP Pond Project (Project) is proposed to be the second project to

| | |
|--|--|
| CONTINUED ON ATTACHMENT: <u> X </u> YES | |
| ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____ | |
| OTHER _____ | |
| <u>VOTE OF BOARD MEMBERS</u> | |
| <u> </u> UNANIMOUS | |
| AYES: _____ | I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY |
| NOES: _____ | |
| ABSENT: _____ | |
| ABSTAIN: _____ | |

break ground (the Board approved participating in construction of the Lentzner Springs Restoration Project at the July 30 meeting). The Project would be constructed and funded by the Conservancy and built on property owned and managed by the District. The detailed plans and specifications have been finalized and construction bids have been solicited. Sealed bids will be opened at 2 p.m. on August 25 and the lowest bid will be reported to the Governing Board during the meeting. For the project to move forward, action is needed by the Conservancy Board to approve the agreement with the District and authorize contracting agreements with the selected contractor. The District Board met August 5 to consider the project and agreement and approved moving forward. Conservancy staff recommends that the Board approve the above actions to initiate work on this small but important restoration project.

Overview: The proposed project will be the second wetland project to be implemented as a result of the adoption of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). A critical component to the HCP/NCCP is the implementation of the Conservation Strategy, which provides for the creation of a preserve system that will protect land for the benefit of covered species, natural communities, biological diversity, hydrologic function and ecosystem function, and the restoration or creation of specific habitats and land cover types both to compensate for impacts and to contribute to recovery of listed species. This proposed pond creation project has been designed to begin to fulfill Plan objectives. The proposed pond will be approximately one acre in size and has been designed to hold water seasonally. The bulk of the pond is one foot deep and will dry relatively rapidly. Smaller sections of the pond will be two and three-feet deep and will hold water farther into the spring.

Project Objectives: The objectives of the Vasco Caves Souza I – HCP Pond Project are to:

- Support wetland plant species in shallow areas of the pond;
- Create a stepped pond that will provide breeding habitat for CA tiger salamander;
- Develop a framework for successful implementation of HCP/NCCP restoration projects through a District and Conservancy partnership.

Selection of a Contractor: The Conservancy published a Notice to Bidders (NOB) for this project in two newspapers. The Conservancy also posted the NOB on the Conservancy website and the District also made the information available on the District's ebid website. Additionally, the Conservancy direct mailed the NOB to the CCC Public Works Contractor list (approximately 250 addresses).

Approximately 20 contractors purchased the Projects plans and attended the mandatory pre-bid meeting at the project site on August 18.

Sealed bids will be publicly opened at 2 p.m. on Monday, August 25, 2008. At that time staff will determine a low bidder and check to make sure that the low bid meets all qualifications to be selected as the contractor. The complete list of bidders will be made available to the Board and will also be posted on the Conservancy's website.

Project Budget: The estimated budget to construct and manage this project for the next five years is presented below. It reflects the cost estimate provided by the project engineers and also

includes District costs proposed in the Agreement. Additional Conservancy monitoring and management costs are included at the bottom of the table. Actual construction costs will be known once bids are opened and a low bidder is identified.

| | |
|--|--|
| ESTIMATED BASE CONSTRUCTION COST | <u>\$245,000</u> |
| Estimated Construction contingency (15%) | <u>\$36,750</u> |
| ESTIMATED CONSTRUCTION COSTS | <u>\$281,750</u> |
| <hr/> | |
| Construction Management By District | <u>\$5,000</u> |
| Management Actions By District During Initial Five-Year Period | <u>\$25,000</u> |
| <hr/> | |
| Anticipated Conservancy direct costs to perform its portion of management and monitoring responsibilities (annual, during initial five years) | <u>\$6,500 to \$15,000 per year</u> |

The Project Budget includes a 15% construction contingency. This contingency may only be used to fund additional costs incurred by the contractor if work beyond that described in project plans and specification is required (for instance, if the contractor encounters a volume of earthwork not anticipated in the Plans). Such additional work requires change orders approved by the Conservancy. The Budget also includes \$5,000 to cover the District’s staff time to have an inspector supervise construction and \$25,000 to cover the District’s anticipated management costs during the first five years after the project is completed (general supervision, grazing management, trash removal).

The Conservancy will have responsibility for performing other management tasks, such as monitoring and reporting on the success of the project, non-native species management and any remedial measures that may be necessary if the Project is not performing as planned. Conservancy costs are more uncertain because they will depend on how well the project is performing.

Conservancy and District staff will track costs during the initial five-year period and develop cost estimates and a funding plan for long term management of the property. Ultimately, a management plan and management funding agreement is anticipated to be developed for the entire Vasco Caves Souza I property. Planning and funding for this restoration project may be subsumed into that larger effort. This will enable cost-savings due to economy of scale and will enable certain management tasks, such as invasive plant management, to be performed on a large enough scale to be effective over the long term.

The Project Budget is consistent with the Conservancy’s approved 2008 Budget. The Conservancy’s 2008 Budget included \$407,000 for Restoration/Creation and \$66,500 for Monitoring and Adaptive Management. Staff anticipates the Vasco Caves Souza I Project and the Lentzner Springs project can be performed within the Conservancy’s 2008 Budget.

Anticipated Project Schedule: Below is a rough estimate of the construction schedule.

August 25, 2008: Contract awarded.

September 15 – October 15: Construction (approximate)

October 15, 2008: Project completion. Monitoring and adaptive management commences.

Permits: Unlike the Lentzner Springs project which required permits from the U.S. Army Corps of Engineers, the Central Valley Regional Water Quality Control Board, the California Department of Fish and Game, and consultation by the U.S. Fish and Wildlife Service, this Project only requires a Notice of Intent (NOI) to the State Water Resources Control Board indicating the Conservancy's intention to comply with the State's general Stormwater Permit. The NOI and required \$307 fee have been submitted.

California Environmental Quality Act (CEQA): The project is categorically exempt from CEQA. Categorical exemption 15333, Small Habitat Restoration Projects, exempts certain restoration projects smaller than 5 acres. That exemption applies to this project. Conservancy staff will file a Notice of Exemption.

Value of Project to Conservancy: There are a number of reasons why it is critical to pursue this pilot wetland restoration projects this year. Over the 30-year life of the HCP/NCCP, the Conservancy may be required to restore or create a large number of acres of various types of wetlands and waters. If impacts to wetlands and waters are substantial during those 30 years, the cumulative total restoration/creation acreage could exceed 500 acres. A more likely but still conservative¹ projection is 300 acres, which amounts to 10 acres of restoration/creation per year. By the end of the second year of implementing the HCP, the Conservancy must have caught up to the mitigation requirements of impacts that have occurred. At this point, no impacts have occurred, though fees have been paid in advance of the HCP for minor impacts to wetlands totaling much less than one acre. The Conservancy's intention as stated in the Work Plan is to be aggressive in its wetlands restoration and creation program and to initiate at least some pilot projects during the first year of implementation (2008 is officially the first year of implementation).

Constructing this pilot project not only helps the Conservancy begin to achieve wetland restoration/creation targets, but also allows the Conservancy to understand and define the key challenges associated with planning and implementing restoration/creation projects, test the abilities of new consultants and become familiar with Districts restoration process. Staff anticipates that this pilot project will be much more expensive per acre than future restoration projects because it is small in size and does not achieve an economy of scale. However, the project can be designed, constructed and maintained within the limits set by the Conservancy's approved Budget for these Budget categories.

Detailed Information on Project Components: The primary components of the project are: 1) excavation of pond, 2) construction of berm and spill way 3) hydroseeding of project area.

¹ Creation/restoration needs could very likely be less than 300 acres, but 300 acres is a conservative projection in the sense that is prudent for the Conservancy not to under-plan.

To perform these tasks, the project area will be cleared and grubbed. The contractor will over-excavate the pond area and sort the soil layers as described in the technical specifications and as shown on the plans. The clay soils will be used to create a clay liner on the bottom and on the sides of the pond to prevent water from seeping out of the pond. The pond will be constructed to the contours and elevations shown on the Grading Plan. The specifications call for the vertical accuracy to be plus or minus 0.1 foot and horizontal accuracy to be plus or minus 0.5 feet.

The pond berm will be reinforced with rirrap (which will be buried and not visible). The berm will also contain an 80 mil High- Density Polyethylene (HDPE) membrane vertically within the berm. The HDPE liner will prevent leakage that could be caused by burrowing animals or cracks in the clay soil. The spillway will be underlain with a geomembrane to prevent erosion.

As described in the Technical Specifications and in the Erosion Control Plans, the area will be reseeded. The upland disturbed areas will be hydroseeded at a rate of 40 lbs/acre with a mix of Blue wildrye, Creeping wildrye grass, Purple needle grass, Meadow barley and Valley gumplant. The wetland area will be hydroseeded at a rate of 60 lbs/acre with a mix of wetland species: Creeping spikerush, Vasey's coyote-thistle, Flatface downingia and Toad rush.

Attachments:

- Draft Agreement with East Bay Regional District.
- Bid package and Plans.



*EAST CONTRA
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Contra Costa County

BID DOCUMENTS

FOR

VASCO CAVES SOUZA I HCP POND

BYRON, CA

CONTRACT NUMBER: 2008 – CO1

PROJECT NUMBER: 2008 -01

NOTES:

- Bids are due by 2:00 p.m., August 25, 2008 at the Contra Costa County Department of Conservation and Development at 651 Pine Street, 4th Floor, North Wing, Martinez, CA 94553.
- Mandatory on-site pre-bid meeting is scheduled for August 18, 2008 at 1:00 p.m.. Meet at the intersection of Walnut Ave and Camino Diablo (see map in Bid Documents).
- To review published construction project information such as Addendums, Plan Holder's List and Bid Results visit www.cocohcp.org, and click on "Construction Projects".

Plans and Specifications Prepared by:

Monk and Associates
1136 Saranap Avenue, Suite Q
Walnut Creek, CA 94595

**VASCO CAVES SOUZA I
HCP POND
BYRON, CALIFORNIA**

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MANDATORY PRE-BID MEETING
EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

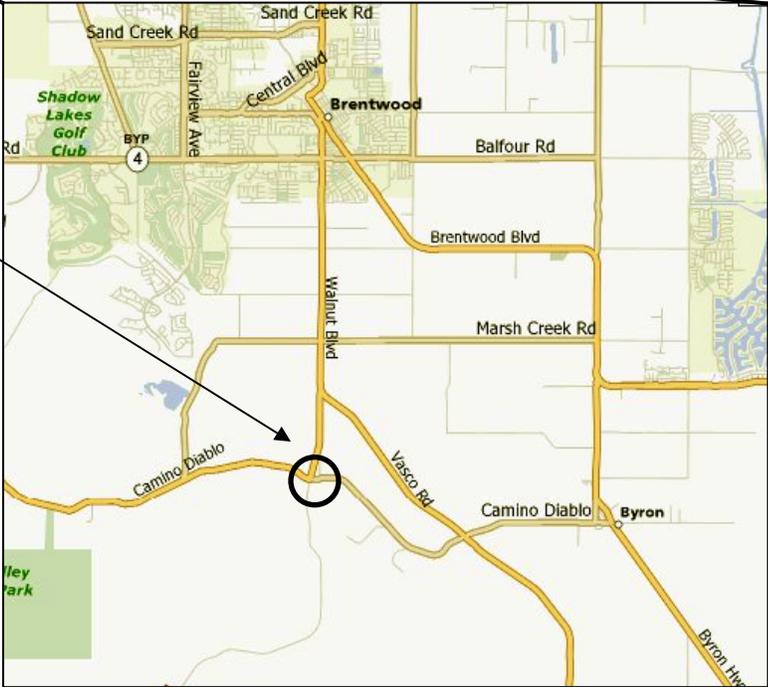
The mandatory pre-bid meeting will be at **1:00 p.m. on Monday August 18, 2008**. Prospective bidders should meet at the intersection of Walnut Blvd and Camino Diablo in Brentwood, CA (east of the town of Byron and south of the city of Brentwood).



We will meet at the intersection of Walnut and Camino Diablo and then caravan to the project site.

There is parking available on the shoulder of both Walnut Ave and Camino Diablo. Please park far off the road on the shoulder and use caution.

We will depart from this meeting point as a group for the project site at 1 p.m. Once we leave the meeting point, there will be no way to join the group.



NOTICE TO BIDDERS

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

NOTICE IS HEREBY GIVEN that the EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY is inviting bids for the project referred to and described as follows:

PROJECT: Vasco Caves Souza I, HCP Pond, Byron, CA

PROJECT DESCRIPTION: Excavate earth to create pond; separate soils and use excavated clay to line bottom and sides of pond; construct berm and install geotextile pyramat and HDPE geomembrane; hydroseed pond and disturbed area.

CONTRACT NUMBER: 2008 – CO1

COMPLETION: 45 Working Days

PROJECT COST ESTIMATE: \$245,000

LICESNE REQUIRED: A

Each bid shall be made in accordance with the Contract Documents on file and available for inspection beginning on Monday, August 11, 2008 at the Conservancy Offices located at 651 Pine Street, 4th Floor, North Wing, Martinez, CA. Prospective bidders may review copies of the original bid documents for information purposes only (**NOT FOR BIDDING**) at the following locations designated below.

Builder's Exchange of Ala. Co.
3055 Alvarado Street
San Leandro, CA 94577

Marin Builders' Association
660 Las Gallinas Ave.
San Rafael, CA 94903

Solano-Napa Builders' Exchange
135 Camino Dorado
Napa, CA 94558

Daily Pacific Builder –
Heritage Park
11875 Dublin Blvd Suite A118
Dublin, CA 94568

Contra Costa Builders Exchange
2440 Stanwell Dr.
Concord, CA 94520

Builders' Exchange
850 South Van Ness Ave.
San Francisco, CA 94110

Peninsula Builders' Exchange
735 Industrial Way
San Carlos, CA 94070

Placer County Builders' Exchange
10656 Industrial Ave Suite 160
Roseville, CA 94678

Valley Builders' Exchange
118 Kansas Ave.
Modesto, CA 95351

Santa Clara Builder's Exchange
400 Reed
Santa Clara, CA 95050

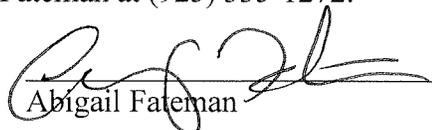
Builders' Exchange of Stockton
7500 N. West Lane
Stockton, CA 95210

Copies of the Contract Documents may be purchased at the Conservancy office for a non-refundable charge of \$45.00 per set, or will be sent Fed Ex for a non-refundable charge for \$45.00 with your Fed Ex number, or \$55.00 using U.S. Mail. Send checks to the East Contra Costa County Habitat Conservancy, Attn: Abigail Fateman, 651 Pine Street, 4th Floor, North Wing, Martinez, CA. We do not accept credit cards or faxed copies of checks.

Only those prospective bidders who have purchased bid documents directly from the Conservancy may bid on this contract. Only bidders who attended the mandatory pre-bid meeting on August 18, 2008 may bid on this contract.

Sealed bids shall be delivered to the Conservancy's office at the above address, directed to Abigail Fateman, **before 2:00 p.m., on Monday, August 25, 2008**. Bids will be publicly opened at the same location at that time.

Any questions, call Abigail Fateman at (925) 335-1272.


Abigail Fateman

8/6/08
Date

INFORMATION FOR BIDDERS

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

1. GENERAL REQUIREMENTS.

- (a) Examination of Site and Contract Documents. Attention is directed to bidder's obligations under ARTICLE 13 of the General Conditions. Any questions, call Abigail Fateman at (925) 335-1272.
- (b) Amendments to Contract Documents. Contract Documents may be modified by written Addendum mailed to all prospective bidders that have purchased Contract Documents. All Addenda will be furnished no later than three (3) days prior to the opening of bids and must be referred to by number and date on the Formal Bid Proposal.
- (c) Licensing. Attention is directed to the requirements of sections §7000 through §7145 of the California Business and Professions Code, known as the "Contractor's License Law". Contractors bidding on this project must possess an appropriate license which is current and valid at the time of Bid submittal and throughout the term of the Contract.
- (d) Prevailing Wages. As required by law, the Contractor shall pay all workers California prevailing wages for each trade or classification on the job during the term of the Contract. These rates include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or training.
- (e) Affirmative Action. The successful bidder and its subcontractors must comply with all applicable state equal employment opportunity and affirmative action laws throughout the term of the Contract.
- (f) **Low Bid. The low bid shall be determined by the aggregate amount of the bidder's base bid (requires Project Manager's determination and modification if necessary).**
- (g) Right to Reject Bids. The Conservancy reserves the right to reject any or all bids, to waive any informality in bids and to accept or reject any items of a bid.
- (h) Withdrawal of Bids. Bids may be withdrawn prior to the opening of bids only by signed, written notice received by the Conservancy to such effect. After the bid opening, bid commitments are relieved only as provided in PARAGRAPH 4 of the Formal Bid Proposal.

2. FORMAL BID PROPOSAL.

- (a) Form and Delivery. The bid must be submitted on an unaltered copy of the Formal Bid Proposal form supplied with these instructions. Every blank should be filled in. Either cross out or insert "N/A" in the blanks that are not applicable. The Formal Bid Proposal must be delivered (with enclosures, if any) in a sealed envelope marked:

East Contra Costa County Habitat Conservancy
651 Pine Street, 4th Floor, North Wing
Martinez, CA 94553
Attn: Abigail Fateman

Proposal for Project Referred to as: HCP Pond

Any bid not delivered to the above address before the time set for the opening of bids in the Notice to Bidders will be returned unopened. Bids will be received at no other place. If the bid is mailed, it must be sent by certified or registered mail, return receipt requested, and actually be received by the Conservancy within the time deadline.

- (b) Completion. Incomplete Bid Proposals may result in Bid rejection.
- (c) Signatures on Formal Bid Proposal. The Formal Bid Proposal must be signed by an authorized person for the bidder. If the bidder is a partnership, a general partner must sign. If the bidder is a corporation, an authorized officer of the corporation must sign.
- (d) Bid Guarantee. No Bid will be considered unless accompanied by a guarantee in the amount of ten percent (10%) of the total bid (including all alternates), which shall be either a **BID BOND** in the form attached to the Formal Bid Proposal written by a surety satisfactory to the Conservancy in its sole discretion, a certified or cashier's check made payable to the Conservancy, or a cash deposit.
- (e) Performance and Labor/Materials Payment Bonds. Each bid shall include all charges for furnishing a Performance Bond (100% of the bid) and a Labor/Materials Payment Bond (100% of the bid). The successful bidder shall furnish the bonds as described in PARAGRAPH 3(d) below.
- (f) Insurance. Each bid shall include all charges for the required insurance coverages.

3. POST-BID PROCEDURE.

- (a) Award of Contract. At the time stipulated in the Notice to Bidders the sealed Formal Bid Proposals will be publicly opened and read. The bids will be reported to the Governing Board of the Conservancy at 5:30 pm on August 25, 2008, and the Board will take formal action at that time.
- (b) Notification of Bid Award. Immediately after Board action, the Conservancy Representative will notify the Contractor in writing and mail three copies of the Agreement for signatures. A preconstruction meeting date shall also be established.
- (c) Preconstruction Meeting. Within fifteen (15) calendar days after the Award of Contract, a meeting will be held to receive all required submittals and discuss Contract and construction procedures and issues.
- (d) Bonds. The successful bidder shall procure and submit one fully executed copy of each Bond required under ARTICLE 7 of the General Conditions at the preconstruction meeting. Attorneys-in-fact must attach a current, certified copy of their power of attorney to each bond.
- (e) Insurance. The successful bidder shall procure the insurance coverage and provide evidence thereof in accordance with ARTICLE 5 of the Agreement and ARTICLE 9 of the General Conditions prior to commencing work.
- (f) Commencement of the Work. The Contractor shall commence work as set forth in the written Notice to Proceed from the Conservancy Representative given not later than seventy-five (75) calendar days from the Award of Contract, per ARTICLE 3 of the Agreement.
- (g) Bid Guarantee.
 - (1) In the event a successful bidder fails to satisfy all conditions for accepting the award within the above time limits, the Conservancy may declare the bidder's Bid Guarantee in default. Bidder acknowledges that the amount of actual damages the Conservancy would suffer in such event is extremely difficult and impractical to determine at this time by reason of the uncertainties, lapse of time, expense and loss of likely bidders resulting from the probable need to readvertise and call for new bids. Bidder agrees that the amount of such Bid Guarantee shall be kept by the Conservancy as liquidated damages and agrees that the Conservancy may then award the work to any other bidder or may call for new bids.
 - (2) All Bid Guarantees will be held until after an award is made and complied with, at which time they will be returned.

Abigail Fateman
Staff, ECCC Habitat Conservancy

2. **SUBCONTRACTORS.** In compliance with State of California Public Contract Code §4104 and ARTICLE 12 of the GENERAL CONDITIONS, the undersigned submits the following information concerning subcontractors:

Example:

| Name/Work/Amount | Lic. Type/#/Expiration | Address/Telephone |
|---|--|---|
| John Doe Constr. Co., Inc. Grading and Paving \$10,000.00 | A & C-12 0000000&0000012 7/2000 & 7/2001 | 11500 Skyline Blvd. Oakland, CA 94619 (510)531-9300 |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(List is is not continued on an additional page, which is attached and incorporated herein by this reference.)

3. **EXPERIENCE.** The undersigned has has not performed work for the Conservancy within two years prior to the date of the Notice to Bidders. If not, the undersigned represents as follows:

a. Five most recent jobs; contract amount, names and telephone numbers of contract officers

| | <u>Job</u> | <u>Amount</u> | <u>Name</u> | <u>Telephone</u> |
|----|-------------------|----------------------|--------------------|-------------------------|
| 1. | _____ | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

- b. Five largest jobs within the last five years; contract amount; names and telephone numbers of contract officers:

| | <u>Job</u> | <u>Amount</u> | <u>Name</u> | <u>Telephone</u> |
|----|------------|---------------|-------------|------------------|
| 1. | _____ | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

4. **BID NON-REVOCABLE**. In consideration of Conservancy's reliance on and investigation and consideration of the Bid of the undersigned, the undersigned agrees that such Bid shall be irrevocable and shall not be withdrawn for sixty (60) calendar days following the bid opening even though an award is made to another bidder. However, such Bid shall be automatically relieved, without notice of any kind, seventy-five (75) days following the bid opening or upon issuance of Notice to Proceed by Conservancy to another bidder, whichever occurs first.
5. **AGREEMENT AND BONDS**. If awarded the Contract, the undersigned agrees to complete, execute and deliver the Agreements and the Bonds within the time and as otherwise provided in PARAGRAPH 3(b) and 3(d) of the Information for Bidders.
6. **INSURANCE**. The undersigned agrees to obtain and maintain in full force, workers compensation insurance (California Labor Code §1860 and §1861) and other insurance as required per **ARTICLE 5** of the Agreement.
7. **CERTIFICATION**. The undersigned certifies that this Formal Bid Proposal is genuine and not a sham or collusive. It is not made in the interest or on behalf of any person not herein named. The undersigned has not directly or indirectly induced or solicited any person, firm or corporation to submit a sham bid or to refrain from bidding. The undersigned has not directly or indirectly sought by agreement or communication with anyone to fix or influence the amount of any other bid or to ascertain the amount of any other bid prior to the opening of the bids. The only persons or parties interested in this bid as principals are those named below. The undersigned has not divulged the bid price herein or any part thereof to any person who does not have a direct financial interest in bidder's general business or is not employed by bidder.
8. **BID GUARANTEE**. No Bid will be considered unless accompanied by a guarantee per PARAGRAPH 2(d) of the Information for Bidders.
9. **DISCLOSURE**. The names of all persons financially interested in the foregoing Formal Bid Proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or any partner in bidder is a corporation, give legal name of corporation, state of incorporation and the names and addresses of the President, Secretary and three principal shareholders; if a partnership, give name of the firm and names and addresses of all individual co-partners; if an individual, give first and last name and address.

| <u>Name</u> | <u>Title</u> | <u>Address</u> |
|-------------|--------------|----------------|
| _____ | _____ | _____ |

I make the above Bid and declare under penalty of perjury that the statements made in this Formal Bid Proposal are true and correct.

FULLY EXECUTED at _____, CA as of _____
(date)

Contractor

Signature

Address _____

Telephone _____

License Number(s): _____

Type of License(s): _____

Expiration Date(s): _____

Federal I.D. Number: _____

BID BOND

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

(NOTE: BIDDER MUST USE THIS FORM IF BID GUARANTEE IS A BOND.)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT _____
(hereinafter called the Principal), as Principal, and _____
a corporation organized and doing business under and by virtue of the laws of the State of
and duly licensed for the purpose of making, guarantying or becoming sole surety upon bonds or
undertakings required or authorized by the laws of the State of California, as Surety, are held and firmly
bound unto the East Contra Costa County Habitat Conservancy, (hereinafter called the
Obligee) in the just and full sum of _____ Dollars (\$ _____)
lawful money of the United States of America, for the payment of which we hereby bind ourselves and
each of our successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the Principal is about to hand
in to the Obligee a Bid for the project known as: _____ in
accordance with the Contract Documents filed in the office of the Obligee and under the notice inviting
proposals therefore.

NOW, THEREFORE, if the Bid as submitted by said Principal shall be accepted, and the contract for
such work or supplies be awarded to the Principal, and the said Principal shall fail, neglect or refuse to
enter into a contract to perform said work or deliver said supplies, and furnish good and sufficient bond
therefore, then the amount of this bond shall be declared to be forfeited to the Obligee, East Contra Costa
County Habitat Conservancy IN WITNESS WHEREOF, Principal and Surety have caused these presents
to be duly signed and sealed this _____ day of _____, 20____.

Principal

Signature

Surety

Attorney-in-Fact

STATE OF CALIFORNIA, COUNTY OF _____ ss.

On _____, 20____, before me _____
A Notary Public, personally appeared _____ known to me to be the person
whose name is subscribed to the within instrument as the Attorney-in Fact of and for _____
____, and acknowledged to me that he/she subscribed the name of _____
therefore as Surety, and his/her own name as Attorney-in-Fact.

WITNESS my hand and official seal.

Signature _____ Seal _____

AGREEMENT

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

| | | | |
|--------------|--|--------------|-----------------|
| PROJECT: | <u>Vasco Caves Souza I</u> | CONTRACT: | <u>2008-CO1</u> |
| | <u>HCP Pond</u> | PROJECT NO.: | <u>2008-01</u> |
| | <u>Byron, CA</u> | | |
| CONSERVANCY: | <u>East Contra Costa County Habitat Conservancy</u> | CONTRACTOR: | |
| | <u>651 Pine Street, 4th Floor, North Wing</u> | | |
| | <u>Martinez, CA 94553</u> | | |
| PHONE: | <u>(925) 335-1272</u> | PHONE: | |

ARTICLE 1. SCOPE OF WORK:

The Contractor agrees to furnish all labor, materials, services and equipment as required by the Contract Documents to accomplish the following:

Excavate earth to create pond; separate soils and use excavated clay to line bottom and sides of pond; construct berm and install geotextile pyramat and HDPE geomembrane; hydroseed pond and disturbed area.

ARTICLE 2. CONTRACT PRICE:

As full compensation, the Conservancy agrees to pay the Contractor \$.00, based on the Formal Bid Proposal. Payment requests shall be submitted on Conservancy forms. The Conservancy shall withhold a ten percent (10%) retention from each payment which may be requested thirty-five (35) days after completion and formal acceptance of the work. Partial payment shall not constitute final acceptance or approval of any work or relieve the Contractor of any of its obligations. The Contractor agrees to delete or add work not covered by ADD-ON ALTERNATES or UNIT PRICES by methods provided in SECTION VIII of the General Conditions.

ARTICLE 3. TERM:

The term of this Agreement shall commence on the date the Board Resolution is adopted as shown below and shall end upon formal acceptance of the work by the Conservancy Representative.

ARTICLE 4. BEGINNING AND COMPLETION OF WORK, DAMAGES:

Time is of the essence of this Contract. The Contractor agrees to submit all written documents required by the Contract Documents within ten (10) working days from the date of written Notice of Award of Contract. All work shall be fully completed to the Conservancy Representative's satisfaction within 60 working days from the date of the subsequent written Notice to Proceed. **The Contractor shall not start any work until such Notice is issued.** Issuance is dependent upon the Conservancy Representative's receipt of all documents required in the original Notice of Award of Contract. If the Contractor fails to complete the work within the specified time plus any extensions thereof, made in accordance with the General Conditions, the Contractor shall become liable to the Conservancy for damages in the amount of **\$500.00** for each calendar day beyond the time specified. Nothing in this paragraph shall be construed to preclude the Conservancy from the recovery of damages for causes other than delay by the Contractor.

ARTICLE 5. INSURANCE:

The Contractor shall provide and maintain statutory coverage for Workers' Compensation Employer's Liability (**\$500,000 per accident**), General Liability (**\$1,000,000 per occurrence**), Automobile Liability (**\$1,000,000 per occurrence**). Builder's Risk or Special Hazards coverage may be required. Workers' Compensation shall comply with California Labor Code §3700 and contain a waiver of subrogation in favor of the Conservancy. The General and Automobile Liability policies must be endorsed to name the East Contra Costa County Habitat Conservancy and the East Bay Regional Park District as additional insured and must be primary insurance.

ARTICLE 6. INDEMNIFICATION:

The Contractor agrees to indemnify, hold harmless, defend, and protect the Conservancy, its employees and agents from any and all claims and expenses (including all reasonable attorneys' fees) arising from the Contractor's performance of this Agreement. (See ARTICLE 8 of the General Conditions.)

ARTICLE 7. LICENSING:

Attention is directed to the requirements of the California Business and Professions Code, known as the "Contractor's License Law", §7000 through §7145. The Contractor must possess an appropriate license which is current and valid at the date of the bid and throughout the term of this Agreement.

ARTICLE 8. LABOR CODE COMPLIANCE:

As required by law, the Contractor shall pay all workers California prevailing wages for each trade or classification on the job during the term of this Agreement. These rates include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or training.

ARTICLE 9. EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION:

The Contractor and its subcontractors will comply with all applicable state equal employment opportunity and affirmative action laws throughout the term of this Agreement.

ARTICLE 10. BONDS: (See attached forms)

The Contractor agrees to furnish, at the Contractor's expense, the following bonds with sureties approved by the Conservancy within 10 working days from the date of written Notice of Award of Contract.

- a. Performance Bond in the amount of the Contract Price. (Required only if progress payments are to be requested.)
- b. Labor and Materials Payment Bond in the amount of the Contract Price.

ARTICLE 11. CONTRACT DOCUMENTS:

Together with this Agreement, the following constitute the "Contract Documents" and the entire Contract between the parties:

- a. Information for Bidders;
- b. Formal Bid Proposal;
- c. Performance and Labor and Materials Payment Bonds;
- d. General Conditions;
- e. Plans prepared by Monk and Associates and Carlson, Barbee & Gibson, Inc., consisting of Sheet Nos. _1-5;
- f. Supplementary Conditions (pp 1-8);;
- g. Description of Bid Items;
- h. Technical Specifications;
- i. Addenda No's _____, dated _____, respectively.

Unless otherwise noted, items **c** and **d** above are the Conservancy's standard forms. The Contract Documents are complementary. Any inconsistencies in them shall be resolved by reference to such documents in the following order or priority: **i, h, g, f, e, d, c**, this Agreement, **b & a**.

ARTICLE 12. EXAMINATION OF SITE AND CONTRACT DOCUMENTS:

By signing this Agreement, the Contractor acknowledges having examined the work site; compared the site with the Plans and Specifications; determined any site variation that affects the bid; and investigated the conditions of existing clearance, restrictions or limitations that affect access to the work. The Contractor's failure to do any and all of the above shall not become a basis for claim of additional monies or extension of time. No allowance shall be made on behalf of the Contractor due to neglect, failure or error in acquainting itself with the project or any and all of the Contract Documents. (See ARTICLE 13 of the General Conditions.)

ARTICLE 13. PROTECTION OF HISTORIC RESOURCES AND HUMAN REMAINS:

The Contractor shall, during all work, be alert for indicators of historic resources (i.e., bivalve shells or fragments, stone tools, old china objects or fragments, old glass objects or fragments, old foundations and old privy deposits) and human remains. If such indicators are uncovered, all work within 50 feet shall be halted and the Conservancy Representative immediately notified. The Conservancy will have the find evaluated by the proper authorities or professionals. Only the balance of that work day shall be compensated by the Conservancy if the Contractor cannot perform work elsewhere on the project. Recommendations from the qualified authorities or professionals may result in a change of work and a change order may be issued.

ARTICLE 14. PRECONSTRUCTION

A preconstruction meeting attended by the Contractor, the Conservancy Representative, and others as appropriate, will be held within fifteen (15) days of Award of Contract to discuss the work. Submit all required documents, requests, and proposals at this meeting for discussion. (See ARTICLE 14 of the General Conditions.)

ARTICLE 15. SAFETY AND PUBLIC CONVENIENCE:

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs. All work shall conform to the requirements of the California Administrative Code, Title 8, Industrial Relations, Division of Industrial Safety. (See ARTICLE 24 of the General Conditions.)

ARTICLE 16. FINAL INSPECTION AND ACCEPTANCE.

At the final inspection, the work may be substantially completed and accepted with a "minor punch list" as determined by the Conservancy Representative. The punch list items are to be completed within the 35-day retention period, otherwise the Contractor waives any and all rights to the retention monies withheld by the Conservancy necessary to complete these items. The Conservancy Representative may hire another contractor to complete the work. All costs, including administrative costs, will be charged against the monies withheld and deducted from the contract price. (See ARTICLE 58 of the General Conditions.)

ARTICLE 17. CONSERVANCY REPRESENTATIVE:

During the term of this Agreement, the Conservancy Executive Director, or his designee, is fully authorized to represent the Conservancy in all contractual matters. The Conservancy Representative shall make all final decisions as to the intent of the Plans and Specifications; the amount and quality of work performed and/or materials furnished; the manner and rate of work performed; the fulfillment of the Contract; and any compensation due the Contractor.

CONTRACTOR:

Name and title (please print)

Signature

Date

Federal Employer I.D. No.

License No.

Expiration

FULLY EXECUTED at Martinez, California.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY:

Pursuant to Board Resolution

No.: 2008-_____

Executive Director

Adopted _____, 2008.

Date: _____

PERFORMANCE BOND

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____ as Surety of Sureties, hereinafter called Surety, are held firmly bound unto the East Contra Costa County Habitat Conservancy, as Obligee, herein after called Conservancy, in the sum of _____ (\$ _____), for which payment Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, a certain written Agreement, dated _____, 20__, was made and executed by and between the Conservancy, as Owner, and the Contractor, which agreement is hereinafter called the Contract and is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall well and faithfully keep and perform **all** the covenants and agreements of Contract, and all alterations, modifications and extensions thereof, by the Contractor to be kept and performed, and shall fully complete all of the work described in the Contract, and all alterations, modifications and extensions thereof, and shall save and hold harmless the Conservancy from any and all loss of damage arising out of the failure of the Contractor and/or any and all subcontractors, to fulfill the Contract, and all alterations, modifications and extensions thereof, and shall fully reimburse and pay to the Conservancy all outlay and costs which the Conservancy may incur in making good any default of the Contractor and/or subcontractors, and in replacing and/or making good any defective material or faulty material or workmanship in the work of the Contractor and/or any and all subcontractors, which may be discovered within one (1) year subsequent to the completion and acceptance of the work provided for in the Contract, then the above obligation shall be void; otherwise, it shall be and remain in full force and effect.

It is expressly covenanted and agreed by and between the Contractor and the Surety that the liability of the Contractor and the Surety shall at all times, and under all circumstances, be co-extensive, and that the Surety shall not be discharged, released or exonerated from liability under this bond, in whole or in part, by an alteration and/or modification of the Contract, whether notice thereof is given the Surety or not, and that the Surety shall be bound thereby, and also bound by any departure or deviation on the part of the Conservancy from the terms of the Contract.

It is further expressly covenanted and agreed that in the event that more than one Surety is obligated hereunder, then, in that event, the co-Sureties, bind themselves in the above stated sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of them, and for all other purposes each Surety binds itself, jointly and severally with the Contractors for the payment of such above stated sum only to the extent of the amount set forth opposite the Surety's name in Appendix A to this bond, which Appendix A is attached hereto and by this reference made a part hereof.

No change or alteration or modification of the Contract or of the work required thereunder shall release or exonerate any Surety or Sureties on the bond.

This bond shall remain in full force and effect notwithstanding that the Contract or any applicable law or statute of the State of California shall be held to be invalid.

IN WITNESS WHEREOF, the Contractor and the Surety or Sureties have hereunto signed their names this ____ day of _____, 20__.

Contractor

Signature

Surety

Attorney-in-Fact

LABOR AND MATERIALS PAYMENT BOND

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____, as Surety, hereinafter called Surety, are held and firmly bound unto the East Contra Costa County Habitat Conservancy as Obligee, hereinafter called Conservancy, for the use and benefit of all persons and laborers of every class performing any work or labor upon or bestowing skill or other necessary services or furnishing materials, provisions, provender or other supplies to be used or consumed in, or furnishing equipment or power contributing to the work described in the agreement hereinafter mentioned, or in any alteration, modification or extension thereof, which persons and laborers are hereinafter called Claimants, in the amount of _____, (\$ _____), for which payment, well and truly to be made, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, a certain written agreement hereinafter called the Contract, dated _____, 20__, was made and executed by and between the Conservancy, as Owner, and the Contractor, which agreement is hereinafter called the Contract and is by reference made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Contractor shall promptly make payment to all Claimants for all labor and material used or reasonably required for use in the performance of the Contract, or any alteration, modification or extension thereof, whether the Contract, or any alteration, modification or extension thereof, is determined to be void, voidable or otherwise, or for any amount due under the Unemployment Insurance Act of the State of California with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the California Franchise Tax Board from the wages of employees of the Contractor and/or any and all subcontractors pursuant to California Revenue and Taxation Code Section 18806 with respect to such work or labor, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

The Contractor and Surety hereby jointly and severally agree with the Conservancy that every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last said Claimant's work or labor was done or performed or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Conservancy shall not be liable for payment of any costs or expenses of any such suit. No suit or action shall be commenced hereunder by any Claimant:

(a) Unless Claimant, other than a Claimant having a direct contract with the Contractor, shall have given written notice to any two of the following: The Contractor, the Conservancy or

the Surety, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid in an envelope addressed to the Contractor, Conservancy, or Surety, at any place where its office is regularly maintained for the transaction of business, or by personal service.

(b) After the expiration of seven months from the date of recordation of a Notice of Completion or Notice of Cessation if such notice is recorded pursuant to Civil Code Sections 3092 or 3093; or, if no such Notice of Completion or Notice of Cessation is recorded, after nine months from the date of completion or cessation of the work.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith herewith, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claims for the amount of such lien be presented under and against this bond.

It is further expressly covenanted and agreed that in the event that more than one Surety is obligated hereunder, then, in that event, the co-Sureties bind themselves in the above stated sum only to the extent of the amount set forth opposite each Surety's name in Appendix A to this bond, which Appendix A is attached hereto and by this reference made a part hereof.

IN WITNESS WHEREOF, the Contractor and the Surety and/or Sureties have hereunto signed their names this ____ day of _____, 20__.

Contractor

Signature

Surety

Attorney-in-Fact

Insurance Requirements

ATTENTION CONTRACTORS

See Supplementary Conditions for additionally insured requirements. See Agreement for levels of insurance required.

Use the industry standard form (known as "Acord" form) and endorsement pages provided by your insurance carrier which meets the above requirements.

If you have questions, call Abigail Fateman, (925) 335-1272.

GENERAL CONDITIONS

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

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GENERAL CONDITIONS

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

SECTION I: GENERAL

ARTICLE 1. LAWS APPLICABLE TO CONSERVANCY INCORPORATED.

This Contract is subject to all Federal, State and local laws, regulations, ordinances, and governing codes, controlling, or affecting the East Contra Costa County Habitat Conservancy. All of these laws, regulations, ordinances, and codes are made a part of this Contract.

ARTICLE 2. DEFINITIONS.

- (a) Contract Documents. See ARTICLE 11 of the Agreement.
- (b) Contractor. Person, persons, firm, partnership, corporation, assignees, licensed by the State of California, Department of Consumer's Affairs, named as such in the Agreement.
- (c) Subcontractor. Person, persons, firm, partnership, corporation, assignees, licensed by the State of California, Department of Consumer's Affairs, listed on the Bid Proposal and having an Agreement with the Contractor to perform specific work.
- (d) Conservancy. East Contra Costa County Habitat Conservancy
- (e) Conservancy Representative. Person designated in the Agreement, the Conservancy's Executive Director.
- (f) Conservancy Inspector. Person designated by the Conservancy Representative to assure that the Contractor's work conforms to the Contract Documents.
- (g) Working Day. Any day, except Saturday, Sunday, legal holiday or inclement condition day. The Conservancy Representative shall be the sole judge of a Working Day.
- (h) Legal Holidays. The Conservancy recognizes the following ten legal holidays: New Year's Day, Dr. Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.
- (i) Inclement Condition Day. Any day that because of weather or site conditions the Contractor cannot work with more than seventy-five percent (75%) of Contractor's labor and equipment force for at least five (5) hours.
- (j) Liquidated Damages. The amount listed in ARTICLE 4 of the Agreement to be paid to the Conservancy or deducted from any payments due the Contractor for each day's delay in completing the Contract in the time allowed.

ARTICLE 3. PERMITS AND REGULATIONS.

Unless otherwise specified in the contract, the Contractor shall give all notices and pay for all fees; obtain and pay for all permits, licenses, municipal and/or special inspections, and certificates of inspection required by any governmental authority having jurisdiction over any part of the work. The Contractor shall comply with all applicable laws, ordinances, rules, and regulations. Before the final payment request is authorized by the Conservancy Representative, the Contractor shall deliver to the Conservancy Representative all licenses, permits, certificates of inspection, or other documents as may be required.

ARTICLE 4. AUTHORITY OF THE CONSERVANCY REPRESENTATIVE.

The Conservancy Representative shall make all final decisions as to the intent of the Contract Documents; the amount and quality of work performed and/or materials furnished; the manner and rate of work performed; the fulfillment of the Contract; and any compensation due the Contractor.

ARTICLE 5. AUTHORITY OF THE CONSERVANCY INSPECTOR.

The Conservancy Representative, or his designee, shall be the Conservancy Inspector and shall be the only communicator in the field giving instructions to the Contractor during construction. The Conservancy Representative has the authority to condemn any work or material that does not conform with the Contract Documents and to suspend any and all work deemed necessary at no cost to the Conservancy. The Representative is empowered to require the Contractor to immediately correct any unsafe or unsuitable condition or work not meeting standards of workmanship to the Conservancy's satisfaction at the Contractor's expense.

The Conservancy Representative may furnish additional instructions necessary for the proper execution of the work. The Conservancy Representative has the authority to require minor field adjustments in the work not involving extra cost. The Contractor shall not deviate from the Contract Documents without the Conservancy Representative's specific approval.

ARTICLE 6. SEPARATE CONTRACTS.

The Conservancy reserves the right to let other contracts in connection with or in the vicinity of this work. The Contractor shall allow other contractors reasonable opportunity for storage of their materials, access to their work sites and execution of their work, and shall properly connect and coordinate work under this Contract and theirs. Any dispute arising under the obligations imposed by this ARTICLE 6 shall be

resolved as provided in ARTICLE 16.

SECTION II: BONDS, INDEMNIFICATION AND INSURANCE

ARTICLE 7. GUARANTEE BONDS.

- (a) **Performance and Payment Bonds.** The Contractor shall furnish a bond in the amount of the Contract price to the Conservancy, guaranteeing the faithful performance of all obligations of the contract, and a bond in the amount of the Contract price, guaranteeing the payment of claims of subcontractors, suppliers of materials or labor, and others. Bonds shall be on the forms attached to the Information for Bidders with Sureties approved by the Conservancy. All bond premiums shall be paid by the Contractor.
- (b) **Approval of Sureties.** Any surety company which at the time of execution of this Contract is listed in the latest published U. S. Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies,@ is hereby deemed approved.

ARTICLE 8. CONTRACTOR'S INDEMNIFICATION OF THE CONSERVANCY.

The Contractor agrees to indemnify, hold harmless, defend and protect the Conservancy, its officers, directors, agents and employees from any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including all reasonable attorney's fees), penalties, judgments or obligations whatsoever in connection with any injury, death, or damage to any person or property or pecuniary or monetary loss that results from, arises out of, or in any way relates to the activities of the Contractor both on and off the project, including but not limited to claims related to the presence, use or disposal of hazardous materials as defined in ARTICLE 23.

In the event a claim is made against the Conservancy, its officers, directors, agents and/or employees or they and/or the Conservancy is named a co-defendant in any action concerning the Contract, the Contractor shall immediately notify the Conservancy. The Conservancy shall either retain legal counsel at the Contractor's sole expense or the Contractor shall reimburse the Conservancy for all legal expenses, including all reasonable attorney's fees, expended in representing the Conservancy.

In the event that an apportionment of liability between the Conservancy and the Contractor is made by the judge in a court of competent jurisdiction, neither the Conservancy nor the Contractor shall request that apportionment of liability be determined by a jury. The Contractor shall be responsible to indemnify and hold harmless the Conservancy as set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of the Conservancy.

The Contractor hereby waives all claims and recourse against the Conservancy, including the right of contribution for loss or damage to property, and releases the Conservancy from any liability related to or in any way connected to the Contractor's activities or the Contractor's use of the project site, premises or facilities.

The Contractor and its subcontractors shall have sole responsibility for the safeguard of their equipment, property and personnel (i.e., employees, agents, officers) from any and all injury, death or damage.

ARTICLE 9. INSURANCE REQUIREMENTS.

The Contractor shall procure and keep in full force and effect during the term of the Agreement, at the Contractor's cost and expense, the following policies of insurance with companies licensed to do business in the State of California which are acceptable to the Conservancy. The Contractor shall, within ten (10) calendar days from the date of Award of Contract, supply the Conservancy with the Certificate showing that such insurance is in force. The Conservancy reserves the right to cancel the contract if these requirements are not met within 30 calendar days of the Notice of Acceptance of Bid.

All policies shall contain a provision that they shall not be canceled or materially changed without thirty (30) calendar days' prior written notice to the Conservancy. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of licensee to furnish the required insurance during the term of the Agreement.

- (a) **Workers' Compensation.** The Contractor shall provide Workers' Compensation insurance as required by law. The Contractor is aware of the provisions of the California Labor Code '3700, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the work.
- (b) **Comprehensive or Commercial General Liability.** Coverage includes Bodily Injury and Property Damage as required by the Agreement.
- (c) **Automobile Liability.** Coverage includes owned, non-owned and hired vehicles as required by the Agreement.
- (d) **Special Hazards.** The Supplementary Conditions may require the Contractor to provide coverage against any special hazards which may be encountered in the performance of this Contract.
- (e) **Builder's Risk.** The Supplementary Conditions may require the Contractor to insure all work and materials supplied against loss or damage by fire, malicious mischief or vandalism.

All policies taken out by the Contractor insuring work and materials supplied shall list the Conservancy as additionally insured and be payable to the Contractor and the Conservancy. Policies shall be kept in full force and effect by the Contractor until final acceptance of the work by the Conservancy.

- (f) **Subcontractor(s) Insurance Requirements.** The Contractor shall either: (1) require each subcontractor to procure and maintain during the life of its subcontract all insurance of the type and in the amounts specified in the Agreement or (2) insure the activities of

subcontractor(s) in its own policy.

SECTION III: OBLIGATIONS OF CONTRACTOR

ARTICLE 10. CONTRACTOR'S RESPONSIBILITY - GENERAL.

The Contractor shall complete all work in accordance with the Contract Documents and subsequent Change Orders, and written Field Directives. The Contractor shall do all work and furnish all labor, materials, tools, appliances, equipment, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, all other facilities, and incidentals necessary to furnish, perform, test, start-up, and complete the work within the term period stipulated in the Agreement; except as otherwise specifically expressed within the Contract.

The right of general supervision by the Conservancy shall not make the Contractor an agent or employee of the Conservancy, and the liability of the Contractor for all damages to persons or to public or private property arising from the contractor's execution of the work shall not be lessened because of such general supervision.

Neither the presence of any Conservancy Officer, director, agent, employee, consultant, or independent testing/inspection service hired by the Conservancy, nor their general review or approval of any work shall relieve the Contractor from its obligations to perform the work in accordance with the Contract Documents.

ARTICLE 11. SUPERINTENDENT.

The Contractor shall submit the name and the qualification resume of the competent superintendent who shall have the authority to represent and act for the Contractor and shall attend the preconstruction meeting. The superintendent (or competent assistant approved by the Conservancy Representative) shall be on the project at all times while work is in progress. The superintendent shall be changed only upon written consent of Conservancy Representative or if the superintendent ceases to be in the Contractor's employ. Any replacement must have the approval of the Conservancy Representative. The superintendent and assistant shall be able to communicate with the Conservancy Representative in English, as necessary for the safe and efficient execution of the work.

ARTICLE 12. SUBCONTRACTORS.

(a) Listing of Subcontractors. Each bidder shall set forth in the Formal Bid Proposal the name, address, phone number, type and cost of work, and proof of required license for each subcontractor who will perform work or render services in any amount exceeding one-half percent (1/2%) of the total bid according to provisions of the California Public Contract Code '4100 through '4113. Each subcontractor shall be licensed by the State of California Department of Consumer Affairs for the portion of work they perform in accordance with the Contractor's License Law. List only one subcontractor per portion.

(b) Failure to Specify. If the Contractor fails to specify a subcontractor, the Contractor must be fully qualified and licensed and shall perform that work.

The Contractor shall not sublet or subcontract any portion of work that was not designated to a subcontractor in the original bid. If the Contractor subcontracts any portion of work after Award of Contract, the Contractor shall be subject to penalties according to the California Public Contract Code '4110.

(c) Substitution of Subcontractors. The Contractor shall not substitute any subcontractor listed in the original bid documents without the written consent of the Conservancy Representative. Consent may be granted in any of the following situations:

- (1) The Contractor demonstrates to the Conservancy that the subcontractor listed was the result of an inadvertent clerical error, subject to the provisions of the California Public Contract Code '4107.5.
- (2) The subcontractor listed refuses to execute a written contract with the Contractor.
- (3) The subcontractor fails or refuses to perform his or her subcontract.
- (4) The subcontractor listed is not licensed or is licensed but not in good standing pursuant to the Contractor's License Law.
- (5) The subcontractor fails or refuses to meet bond and/or insurance requirements of the Contractor.
- (6) The subcontractor becomes bankrupt or insolvent.
- (7) The subcontractor is substantially delaying or disrupting the progress of the work.
- (8) The Conservancy Representative determines that work performed by the subcontractor is substantially unsatisfactory and not in accordance with the Contract Documents.
- (9) The listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

Prior to substitution of a subcontractor, the Conservancy Representative shall give written notice to the listed subcontractor of the Contractor's request to substitute and the reasons for that request. Written notice shall be served by certified or registered mail to the last known address of the listed subcontractor. The subcontractor shall have five (5) working days to file with the Conservancy written objections to the substitution. Failure to file written objections shall constitute the listed subcontractor's consent to substitution. If written objections are filed, the Conservancy shall give five (5) working days written notice to the Contractor and subcontractor of a hearing by the Conservancy on the Contractor's request for substitution.

The Contractor shall not permit a subcontractor to assign, transfer or convey the performance of work to another subcontractor without the written consent of the Conservancy Representative.

- (d) Violation of ARTICLE 12 (a), (b) or (c); Penalty. In accordance with California Public Contract Code § 4110, the Conservancy may consider the violation of any portion of ARTICLE 12 (a), (b) or (c) a breach of contract and cancel this Contract or penalize the Contractor ten percent (10%) of the subcontract money involved. The Contractor shall be entitled to a public hearing as described above. The Conservancy will give written notice of the hearing five (5) days in advance. All recovered funds shall be paid to the Conservancy's General Fund.
- (e) Contractor's Responsibility-Subcontractors. The Contractor agrees to be fully responsible to the Conservancy for the acts and omissions of any and all subcontractors and for persons either directly or indirectly employed by them. The Contractor shall coordinate all subcontractors to complete all the work in accordance with the Contract Documents.
- (f) Non-Contractual Relationship. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the Conservancy.

ARTICLE 13. PRE-BID EXAMINATION OF SITE AND CONTRACT DOCUMENTS.

- (a) Examination of Site. By executing the Formal Bid Proposal, the Contractor acknowledges having examined the work site; compared the site with the Plans and Specifications; determined any site variation that affects the Bid; and investigated the conditions of existing clearances, restrictions, or limitations that affect access to the work. The Contractor's failure to do any and all of the above shall not become a basis for claim of additional monies or extension of time.
- (b) Transportation/Access. The Contractor shall investigate the conditions of the existing public and private roads for clearances, restrictions, and other limitations to transportation, and the ingress/egress at the job site. The unavailability of transportation facilities or limitations thereon shall not become a basis for claims against the Conservancy or extension of time for the completion of work.
- (c) Examination of Contract Documents. The Contractor shall examine the Contract Documents to verify that there are no missing pages or sheets and shall obtain and examine any and all missing material prior to submitting the Bid. The Conservancy shall not allow any claim based on errors in the Contract Documents which the Contractor has reason to recognize, unless the Contractor gives prompt notice of the error to the Conservancy Representative in writing.
- (d) Contractor's Failure to Examine. No allowance shall be made on behalf of the Contractor due to neglect, failure or error in acquainting itself with the project and existing conditions or any and all of the Contract Documents.
- (e) Contractor's Notice to Subcontractors. The Contractor's failure to provide all subcontractors with all information received during the pre-bid period shall not become a basis for monetary claim, extension of time or to change contract requirements.

ARTICLE 14. PRECONSTRUCTION.

- (a) Preconstruction Meeting. A preconstruction meeting attended by the Contractor, the Conservancy Representative, and others as appropriate, will be held within fifteen (15) days of Award of Contract to discuss the work. Submit all required documents, requests, and proposals at this meeting for discussion.
- (b) Review Work Site and Contract Documents. Upon award of contract, the Contractor shall carefully compare work site conditions, all drawings, specifications, and other instructions and shall report in writing to the Conservancy Representative any error, inconsistency or omission at the preconstruction meeting.
- (c) Submittals. Submittals for substitution of materials, methods of work, or as otherwise may be required by the contract shall be submitted to the Conservancy at or before the preconstruction meeting. Submittals shall include all descriptive data, engineering data, specifications, samples, or other information as may be required for proper analysis by the Conservancy for conformance to plans and specifications.
- (d) Survey Requirements. When the Conservancy is responsible for surveying, the Contractor shall propose desired staking and layout schedule along with offsets, intervals, etc., at the preconstruction meeting. The Conservancy Representative will review the Contractor's proposal and establish the surveying program best suited for all parties.
- (e) Trenching and Excavation Plan. The Contractor shall submit a shoring plan for review and acceptance by the Conservancy at the preconstruction meeting for all work that may require excavations five feet deep or deeper. The responsibility for adequacy and safety remains the sole responsibility of the Contractor. The shoring plan shall conform to all applicable safety orders (ARTICLE 24 (c)).
- (f) Project Reference Points. The Contractor shall locate any and all project monument points and survey stakes and take measures to prevent their dislocation or destruction before the Contractor starts work.
- (g) Use of Equipment. No equipment shall move onto the project without approval from the Conservancy Representative. All equipment shall remain within the project boundaries as set forth by the Conservancy Representative and/or contract documents.

ARTICLE 15. WORK SCHEDULE.

The Contractor shall prepare a Work Schedule acceptable to the Conservancy Representative to be discussed at the preconstruction meeting, fixing the dates at which the various phases of the work will be performed. The Contractor's work schedule shall not supersede the working days period stated in the Agreement.

No payment request will be made by the Conservancy to the Contractor until the Work Schedule has been approved by the Conservancy Representative. Any changes that affect the Work Schedule shall be made by the Contractor and immediately submitted to the Conservancy Representative for review and approval. Failure to make Work Schedule adjustments shall be cause for the Conservancy to delay payment request payments. Work Schedule changes shall not affect the completion date established in ARTICLE 4 of the Agreement.

ARTICLE 16. MUTUAL RESPONSIBILITY OF CONTRACTORS.

When the Contractor causes damage to or willfully delays another contractor or subcontractor, the Contractor is obliged to settle with that contractor or subcontractor by agreement. If a contractor or subcontractor serves written notice to the Conservancy of the Contractor's failing to meet this obligation, the Conservancy shall notify the Contractor in writing of a pending claim. The Contractor shall defend itself (and the Conservancy if included) at the Contractor's expense. The Contractor shall pay all costs incurred by the Conservancy as a result of any judgment for another contractor.

ARTICLE 17. CASH ALLOWANCES.

The Contractor declares that the Contract price includes all expenses and profit. The Contractor shall make no demand for additional expenses and/or profit for work in this Contract.

ARTICLE 18. JOINING, CUTTING, PATCHING AND DIGGING; DEFECTS.

- (a) Joining of Parts. The Contractor shall cut, fit or patch Contractor's work as required to make its several parts come together properly with the work of other contractors and shall do all that is necessary in the joining of all parts in a neat and workmanlike manner to the satisfaction of the Conservancy Representative. The Contractor shall not damage or endanger any portions of work fully or partially completed.
- (b) Consent Required. The Contractor shall not cut, dig or otherwise alter the work of another contractor without the consent of the Conservancy Representative.
- (c) Defects. If the Contractor's work depends upon the work of another contractor, the Contractor shall inspect and promptly report to the Conservancy Representative any defects that could prevent proper performance. The Contractor's failure to inspect and report shall constitute acceptance of the other contractor's work. No claim by the Contractor of prior defects affecting the work will be considered after work has started. The Contractor will make all corrections at own expense. Prior defects affecting the Contractor's work discovered after starting shall be reported immediately to the Conservancy Representative.
- (d) Measurement of Work in Place. The Contractor shall measure work already in place and shall report promptly in writing to the Conservancy Representative any discrepancy between existing work and the Plans and Specifications.
- (e) Costs. Any costs resulting from defective or out of sequence work shall be borne by the Contractor.

ARTICLE 19. USE OF PREMISES.

- (a) Physical Limits of Materials, Operations. The Contractor shall confine its apparatus, storage of materials and the operations of Contractor's workers to limits indicated by law, ordinances, permits or directions of the Conservancy Representative and shall not unreasonably encumber the premises with materials.
- (b) Temporary Storage. The Contractor shall not use the project site or any area set aside as a temporary construction yard as a site for the temporary storage of equipment, appliances, vehicles, materials, etc., that are not or will not be used in the work.
- (c) Dangerous Loads. The Contractor shall not load or permit any part of the work to be loaded with a weight that will create a potentially dangerous situation.
- (d) Signs, Advertisement. The Contractor shall comply with and enforce the Conservancy Representative's instructions regarding signs and advertisements. Advertising signs or name labels of any description shall not be placed on or near the premises without the Conservancy Representative's written consent.
- (e) Field Office. If a job site office or storage yard is used, it and its location must meet the approval of the Conservancy Representative.

ARTICLE 20. PROJECT CLEANLINESS.

The Contractor shall keep the project site and the surrounding areas free from accumulations of waste material and rubbish generated by employees and subcontractors. The Contractor shall remove daily all rubbish, tools, equipment and surplus materials leaving the work

"broom clean" at the completion of each day, unless a different nature of cleanup or repair is specified elsewhere in the Contract Documents.

If the Contractor fails to clean up or there is a dispute between the Contractor and other contractors as to responsibility for removal of rubbish, etc., the Conservancy may remove the rubbish, etc., and charge the cost to a contractor as the Conservancy Representative determines to be reasonable.

ARTICLE 21. WATER AND AIR POLLUTION.

- (a) Water Pollution. The Contractor shall exercise every precaution to protect streams and bodies of water from pollution by fuels, oils, salts or other hazardous materials as defined in ARTICLE 23. The Contractor shall minimize muddying and silting of any stream or body of water. The Contractor shall, at the Construction Inspector's direction, perform work in small units or use modified construction procedures when necessary, to provide effective water pollution control. The Contractor's operations shall at all times be subject to the California Department of Fish and Game codes and other applicable statutes relating to the prevention or abatement of water pollution and to requirements for erosion control.

At the preconstruction meeting, the Contractor shall submit to the Conservancy Representative in writing, a program to control water pollution and/or erosion. The Contractor shall provide, at no cost to the Conservancy, temporary dikes, basins, ditches, straw, seed, etc., when, in the opinion of the Conservancy Representative, they become necessary as a result of the Contractor's operations. The Conservancy Representative may require the Contractor to revise project operations and the Work Schedule at no additional cost to the Conservancy if the Contractor's water pollution control measures are ineffective.

- (b) Dust Control. Dust resulting from the Contractor's performance of the work shall be controlled by the Contractor either by applying water or a dust palliative without additional costs to the Conservancy. The Conservancy Representative has full authority to suspend work wholly or in part should the Contractor fail to perform to the satisfaction of the Conservancy Representative.

ARTICLE 22. PROTECTION OF HISTORIC RESOURCES AND HUMAN REMAINS.

The Contractor shall, during all work, be alert for indicators of historic resources (i.e.; bivalve shells or fragments, stone tools, old china objects or fragments, old glass objects or fragments, old foundations and old privy deposits) and human remains. If such indicators are uncovered, all work within 50 feet shall be halted and the Conservancy Representative immediately notified. The Conservancy will have the find evaluated by the proper authorities or professionals. Only the balance of that work day shall be compensated by the Conservancy if the Contractor cannot perform work elsewhere on the project. Recommendations from the qualified authorities or professionals may result in a change of work and a change order may be issued.

ARTICLE 23. HAZARDOUS MATERIALS.

- (a) Definition. As used herein, hazardous materials shall include all items listed in any statute, ordinance or publication defining hazardous materials including, but not limited to, common household items containing substances now or subsequently listed as a hazardous material or substance, chemicals, drugs, any materials used for laboratory analysis, nuclear and/or radioactive materials, toxic substances, hazardous substances, hazardous wastes, contaminated or polluting substances, materials or waste toxic, caustic, corrosive, gaseous or flammable substances that may cause injury, illness or death to living organisms.
- (b) Approval. The Contractor shall not use any hazardous material in connection with this project without the prior written approval of the Conservancy Representative. Ten (10) working days prior to using a hazardous material, the Contractor shall submit to the Conservancy Representative complete Material Safety Data Sheet (MSDS) information, product specifications, and a document stating the application rate and method and including the name of the manufacturer's local representative and emergency telephone numbers. All materials shall be properly labeled in accordance with applicable laws.

The Conservancy Representative's response to the Contractor's request for approval of hazardous materials use shall not affect the Contractor's obligation to comply with the provisions of this section.

- (c) Application. In using hazardous materials, the Contractor shall:
1. Notify the Conservancy Representative of the application schedule at least five (5) working days in advance.
 2. Comply with all applicable federal, state, and local laws, regulations, and ordinances relating to the use and disposal of hazardous materials and containers, environmental protection, industrial hygiene, worker and public safety.
 3. Supply protective clothing or equipment as required by applicable federal or state law for all persons handling hazardous materials, and for the Conservancy Representative as required for inspection of the work.
 4. Be responsible for the notification of all concerned parties adjacent to or effected by said hazardous material and as directed by the Conservancy Representative.

- (d) Special Situations. In the event the Contractor encounters material on the site reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous or toxic substance, the Contractor shall immediately stop work in the areas affected and report the condition to the Conservancy Representative. If in fact the material is asbestos, polychlorinated biphenyl (PCB) or any other hazardous or toxic substance which has not been rendered harmless, the work in the affected area shall not be resumed except by written agreement between the Conservancy Representative and the Contractor. The work in the affected area otherwise shall only be resumed when asbestos, polychlorinated biphenyl (PCB) and other hazardous or toxic substances have been removed or rendered harmless.

ARTICLE 24. SAFETY AND PUBLIC CONVENIENCE.

- (a) Responsibility for Safety. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs. All work shall conform to the requirements of the California Administrative Code, Title 8, Industrial Relations, Division of Industrial Safety. The Contractor alone shall be responsible for responding to and for the final satisfaction of any and all claims of personal injury or property damage.
- (b) Safety Equipment and Workers. The Contractor shall take all reasonable measures as required by existing conditions and performance of the Contract to protect the public and their property. The Contractor shall provide adequate barricades, fences, signs, warning lights, watchpersons, flagpersons, etc., to protect the public and their property. Safety devices and workers shall comply with the current State of California "Manual for Warning Signs, Lights and Devices for Use in Performing Work Upon Highways", as a minimum standard. All lighting shall be electric powered and left on from sunset to sunrise.
- (c) Trench and Excavation Safety. As required by the California Labor Code '6705, whenever any portion of the work involves excavating or trenching five feet or deeper, the Contractor shall submit for acceptance by the Conservancy, a detailed plan showing the design of shoring, bracing, sloping, etc., to protect the Contractor's workers, and the public at large. If the plan varies from standard shoring systems established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor. All costs for trenching, excavation safety, including engineering, shall be included within the Contract Bid.
- (d) Unauthorized Vehicles. When required by this Contract or the Conservancy Representative, the Contractor shall take measures to prevent unauthorized vehicular traffic.
- (e) Material and Equipment Transportation. Trucks hauling material or equipment shall not exceed vehicle or posted load and speed limits.
- (f) Public Convenience. The Contractor shall conduct the work so as to ensure the least possible obstruction to traffic or inconvenience to the general public.
- (g) Failure to Provide for Safety. If in the opinion of the Conservancy Representative, the Contractor fails to adequately provide for safety, the Conservancy Representative may:
1. Suspend construction within the area.
 2. Order and/or place any additional warning devices, barriers, or protective equipment deemed necessary.
 3. Do both 1 and 2.

The Conservancy shall not assume the Contractor's responsibilities by this action and does not release the Contractor's obligations. The Contractor will be liable for all costs the Conservancy incurs in acting under this section and shall reimburse the Conservancy for double the Conservancy's costs. This action shall not become a basis for any claim for time or money against the Conservancy.

ARTICLE 25. FIRE HAZARDS AND PREVENTIONS.

- (a) The Contractor will be held responsible for fire ignited by the Contractor's employees, subcontractors, or equipment. Employees shall not be allowed to start fires. No open flames shall be permitted.
- (b) The Contractor shall take necessary precautions to guard against and eliminate fire hazards that may cause damage to construction work, building materials, equipment, public, and private property, including grassland, brush, and trees.
- (c) Flammable materials shall not be poured into drain lines, but shall be disposed of in a manner approved by the Fire Marshal's office and Conservancy Representative.
- (d) Fire hydrants shall be kept accessible to fire-fighting equipment at all times.

ARTICLE 26. UTILITIES.

- (a) Existing Utilities. The Contractor's attention is directed to the existence of utilities shown or not shown on the Plans. The location of known utilities are approximate. It is the Contractor's responsibility to investigate and locate existing utilities. The Contractor shall call Underground Service Alert (1-800-642-2444) for assistance. The Contractor will immediately report to the Conservancy Representative any utility that varies significantly from the Plans.

The Contractor shall remove and/or replace any known existing structures, pipes, conduits, pavements, etc., as required for the performance of the work at no cost to the Conservancy.

- (b) Work on Utilities. When it is necessary for the Contractor to remove, relocate or protect any utility in the execution of this Contract, the Contractor shall remove, relocate, or protect that utility or notify the owner and make arrangements for coordinating the removal, relocation or protection of that utility with his work. There shall be no claim for additional compensation or time by the Contractor for this work. The Contractor shall repair all areas surrounding utility work to the Conservancy Representative's and utility owner's satisfaction according to California Government Code ' 4215.
- (c) Utilities Not Identified in Plans and Specifications. When any utility on the project must be removed, relocated, protected or repaired by the Contractor and the utility is not identified in the Plans and Specifications, the Conservancy shall compensate the Contractor for the cost of that utility work. The Contractor shall be compensated by the Conservancy for equipment idled by work on unidentified utilities. The Contractor is held to have used reasonable care in his work to prevent damage to any unknown utility. The Conservancy shall not charge the Contractor for delay of work due to any unidentified utility. The Contractor shall notify the Conservancy Representative and the utility owner in writing, whenever the Contractor discovers an unidentified utility according to California Government Code ' 4215.
- (d) Right to Enter Reserved. The Conservancy and any and all utility companies have the right to enter the project to make repairs and changes that become necessary in the performance of this Contract.
- (e) Certificate of Satisfaction. The Contractor shall, at Contract completion, produce written certification provided by any utility affected by the Contractor's work stating that the utility is satisfied with the Contractor's work.
- (f) Temporary Utilities and Facilities. The Contractor shall provide all temporary utilities and sanitary facilities unless otherwise stated in the Contract Documents. All of these must be approved by the Conservancy Representative before installation. The Contractor shall immediately remove temporary items upon completion of Contract or at the direction of the Conservancy Representative.

ARTICLE 27. PROTECTION OF WORK AND PROPERTY.

- (a) The Contractor shall protect from damage or loss the Contractor's work and existing Conservancy, private or public properties. The Contractor shall make good any such damage or loss to the satisfaction of the Conservancy Representative and owner.
- (b) When the Contractor is working in or around existing vegetation, the Contractor shall provide protective devices and take measures to preserve vegetation that is to remain. Care shall be taken not to debark trees, break limbs, or cause unnecessary damage to root systems. Damage shall be repaired by the Contractor to the satisfaction of the Conservancy Representative. There shall be no cost to the Conservancy for the repair work. The Conservancy may require the full replacement of damaged materials.

ARTICLE 28. ASSUMPTION OF RISK.

- (a) Injury, Damage to Work. The Contractor assumes all risks of injury or damage to the work and materials arising from fire, storm, or other causes prior to the acceptance of the work. The Contractor shall repair and/or replace any work or materials lost for any cause.
- (b) Exception. The Contractor shall not assume risk of injury or damage to work when damage exceeding five percent (5%) of the total Contract is caused by natural catastrophe as proclaimed by the Conservancy. The Contractor shall not assume risk of injury or damage not required by SECTION II of these General Conditions. In event of any of the above, the Conservancy may terminate this Contract upon reasonable notice to the Contractor and upon payment of any amount owed under SECTION IX of these General Conditions.

ARTICLE 29. CONTRACTOR'S ABANDONMENT.

The Contractor's abandonment, failure to supply sufficient material and/or workers or comply with the California Public Contract Code ' 10262 for a period of more than three (3) working days after receipt of written notification of these deficiencies from the Conservancy shall be grounds for terminating the Contractor's control of the work. The Conservancy may assume the work and charge the Contractor any and all costs and expenses for finishing the work. The withholding of payment shall be as set forth in ARTICLE 60(d).

SECTION IV: PLANS, SPECIFICATIONS, BOUNDARIES AND SURVEY

ARTICLE 30. EXECUTION AND CORRELATION OF DOCUMENTS.

- (a) Order of Precedence. In resolving disputes resulting from conflicts, errors, or discrepancies within the Contract documents, the order of precedence shall be as follows:
 - 1. Field Directives
 - 2. Change Orders
 - 3. Addenda
 - 4. Technical Specifications
 - 5. Referenced Specifications
 - 6. Supplementary Conditions
 - 7. Contract Drawings and Details
 - 8. General Conditions
 - 9. Performance and Labor/Material Payment Bonds
 - 10. Formal Bid Proposal
 - 11. Information for Bidders

- (b) Order of Precedence - Drawings. The order of precedence for drawings shall be as follows:
1. Figures govern over scaled dimensions.
 2. Detail drawings govern over general drawings.
 3. Addenda/Change Order drawings govern over Contract Drawings
 4. Shop drawings govern over Contract Drawings.
- (c) The Plans and Specifications are complementary. Work shown on the Plans and not mentioned in the Specifications, or vice versa, is to be executed as if in both. The Contractor shall coordinate the contract documents to assure the performance of all work to full completion.

ARTICLE 31. SPECIFICATION REFERENCES.

- (a) Any material or method specified by reference to the number, symbol or title of a specific standard such as a Commercial Standard, a Federal Specification, a trade association standard or similar standards, shall comply with the requirements in the latest revision thereof, and any amendments or supplements thereto in effect on the date of Advertisement for Bids, except as limited as to type, class or grade or modified in such reference.
- (b) Reference to "CalTrans Standard Specifications" means the State of California, Department of Transportation Standard Specifications, current edition, except that where "Engineer" is mentioned in the Standard Specifications, it shall mean " Conservancy Representative". Sections referred to in the Standard Specifications shall have full force and effect as though printed in full in these specifications except when modified by these specifications.

ARTICLE 32. COPIES FURNISHED.

The Conservancy shall furnish the Contractor with up to five (5) complete sets of the Plans, Specifications and any Addenda. The Contractor may request additional copies from the Conservancy Representative, for which there may be additional costs to the Contractor.

ARTICLE 33. SHOP DRAWINGS.

Shop drawings are not change orders. No extra cost to the Conservancy shall result from their approval. Where required, the Contractor shall promptly submit five (5) copies of any shop drawings to the Conservancy Representative early enough for review and processing by the Conservancy so as not to cause work delays. The Contractor shall make all required corrections and resubmit five (5) corrected copies for review. The Contractor shall not begin work on any shop drawing item without approved shop drawings. If deviations, discrepancies and conflicts between shop drawings and Contract Documents are discovered after shop drawings are approved by the Conservancy, the shop drawings shall prevail. The Conservancy Representative's approval of shop drawings shall not relieve the Contractor of responsibility for completing all work in the Plans and Specifications and for correcting any errors or problems created by the shop drawings.

ARTICLE 34. WORK SITE PLANS AND SPECIFICATIONS.

The Contractor shall at all times keep a complete and accurate set of all Plans, Specifications, Addenda, Change Orders and shop drawings on the work site (in good order) for use by the Conservancy Representative.

ARTICLE 35. OWNERSHIP OF PLANS, SPECIFICATIONS, MODELS AND SAMPLES.

All Plans, Specifications, Models, and Samples furnished to the Contractor are the property of the Conservancy. Plans, Specifications and Models are not to be used by the Contractor on any other work. They shall be returned to the Conservancy upon request.

ARTICLE 36. BOUNDARIES.

The Conservancy shall, if deemed necessary, establish project boundaries in the field whether or not shown on the Plans.

ARTICLE 37. SURVEY AND LAYOUT.

- (a) When the Conservancy is responsible for surveying, the Conservancy shall lay out the work by establishing one set of construction stakes and bench marks (i.e., offsets, intermediate stations, grades, cuts/fills) for construction use after clearing and grubbing.
- (b) The Contractor shall notify the Conservancy Representative (in writing) not less than five working days prior to the need for initial layout specifying offset and staking intervals desired; and not less than two working days prior to the need for any subsequent staking.
- (c) The Contractor shall protect and maintain from damage or dislocation all monuments and survey stakes. The Contractor shall transfer (with due care and accuracy) grades and reference stakes that must be relocated during construction. The Contractor shall be responsible for all errors or omissions that result from transference. If it becomes necessary for the Conservancy to reestablish any dislocated or destroyed stake(s), the Contractor shall notify the Conservancy Representative two working days in advance. The Contractor shall reimburse the Conservancy for all restaking costs. This cost will be shown as a deduct on a change order at the reasonable rate established by the Conservancy Representative.
- (d) The Contractor shall insure that all lines, elevations, grades, and alignments comply with the Contract Documents.

- (e) The Contractor shall preserve all stakes established by the Conservancy Representative that the Contractor believes to be in error. The Conservancy Representative will verify the location and/or grade of any stake(s) in dispute. The Contractor shall make no claim for monies or time concerning the correctness of any stake(s) that have been dislocated or destroyed.
- (f) The Conservancy reserves the right to perform quality control surveys to insure conformance with contract documents, such as checking forms prior to pouring concrete or checking sub-grade prior to paving, as deemed necessary or appropriate by the Conservancy Representative. Should discrepancies be found, the Contractor shall reimburse the Conservancy for this survey cost in the same manner as for restaking costs.

SECTION V: MATERIALS

ARTICLE 38. SAMPLES.

Samples are physical examples provided for testing or examination which demonstrate materials, equipment or workmanship that meet or establish standards by which the work will be judged. The Contractor shall submit samples to the Conservancy Representative promptly so as not to delay the work and to allow a reasonable time for Conservancy review of such samples prior to execution of the affected work. The Contractor and/or supplier(s) shall cooperate by allowing access to or providing any samples required by the Conservancy. The work shall be in accordance with approved samples. Samples shall be provided at no cost to the Conservancy. Samples may only be removed from the work site upon approval of the Conservancy Representative.

ARTICLE 39. MATERIALS.

- (a) **Quality.** All materials furnished by the Contractor shall be new and meet all standards of quality and workmanship of their kind unless otherwise specified in the Contract Documents. All materials are at any time subject to inspection, sampling, testing, approval or rejection by the Conservancy Representative. When required by the Conservancy Representative, the Contractor shall furnish acceptable documented evidence of the kind and quality of materials used. The words "or equal" in the Plans and Specifications mean "or equal in the opinion of the Conservancy Representative".
- (b) **Substitutions.** The Conservancy Representative's approval of a substitute material shall not relieve the Contractor of responsibility for total compliance with the Plans and Specifications. The Contractor shall pay all costs for modifications resulting from the approved substitution of material. There shall be no cost to the Conservancy resulting from any substitute material.
- (c) **Substitution Request.** Request for a material substitution shall be submitted promptly to the Conservancy Representative in writing at least ten (10) working days prior to the day approval is required so as not to delay the work.

ARTICLE 40. MATERIALS LIST.

When requested by the Conservancy Representative, the Contractor shall submit at least five (5) copies of catalog cuts, engineering data, etc., of materials which are proposed for the work. The materials list submitted shall include a description of the materials and their suppliers. No payment request shall be processed before the Conservancy Representative reviews and accepts the materials list.

ARTICLE 41. UNAVAILABLE OR LATE MATERIALS.

It is the responsibility of the Contractor to order and schedule delivery of materials in time to avoid construction delays. If any item is unavailable or will be delivered late, the Contractor shall immediately notify the Conservancy Representative. The Contractor must substantiate that materials were ordered in a timely manner. The Conservancy Representative may grant a contract time extension or consider a suitable material substitution for continuing the work.

SECTION VI: TIME LIMITS ON WORK

ARTICLE 42. WORK HOURS.

No work or equipment shall be started on a workday before 7 a.m. nor continue beyond 7 p.m. except when permitted by the Contract Documents, or agreed upon at the preconstruction meeting. Illegal work outside of these hours or on weekends and holidays shall be subject to a fine at double the rate of Liquidated Damages at the sole discretion of the Conservancy Representative. Regulations of local jurisdictions may alter these working hours.

ARTICLE 43. EXTENSIONS, DELAYS, SUSPENSION OF WORK.

- (a) **Written Application for Extension.** The Contractor may make written request to the Conservancy Representative for an extension of time to complete the Contract promptly following an occurrence of any one or more of the following:
 - (1) Delay due to work by the Conservancy or another contractor.
 - (2) Delay in delivery or availability of material, equipment, etc., if the Contractor can document that the material, equipment, etc., has been ordered with enough lead time for the manufacture or acquisition of the item.
 - (3) Labor dispute beyond the Contractor's control that affects work progress.
 - (4) A natural disaster that the Conservancy Representative concludes substantially damages completed work or stored material (provided the Contractor's neglect did not contribute to the damage).

- (5) **Unusual Inclement Conditions.** The Contractor shall submit the accumulated record mean values from climatological data filed by the U. S. Department of Commerce as part of the Contractor's claim for time extension due to inclement conditions, if an extended inclement weather season causes contract work delay.

The Conservancy Representative shall have sole discretion in the approval or denial of Contract time extensions.

- (b) **Liquidated Damages.** If the Contractor fails to complete the Contract within the Contract time plus approved extensions, the Contractor shall be liable to the Conservancy for the amount stated in ARTICLE 4 of the Agreement as liquidated damages and not as a penalty. This amount is agreed by all parties to be fair and reasonable. It is expressly agreed that it would be impracticable to fix the actual amount of damages.

Any money due the Contractor may be retained by the Conservancy to cover liquidated damages. Should retained money not be sufficient to cover damages, the Conservancy shall have the right to recover the balance from the Contractor or its sureties.

- (c) **Authorized Suspension.** Should the Conservancy Representative authorize a work suspension, the suspension time shall be added to the Contract time. Work suspended by the Conservancy shall not be deemed a waiver of the Conservancy's right to damages for non-completion.
- (d) **Delay Caused by Conservancy.** In the event the Contractor is delayed in the work by the Conservancy, the Contractor's compensation shall be limited solely to an extension of time. The Contractor agrees that in no event shall the Contractor be entitled to a monetary payment over and beyond that specified in the Contract plus approved change orders.
- (e) **Additional Work to Correct Delays.** If, in the opinion of the Conservancy Representative, the Contractor is not proceeding with the work as scheduled, upon written direction from the Conservancy Representative, the Contractor shall work (at no additional cost to the Conservancy) such overtime, additional shifts, Saturdays, Sundays or holidays required to correct delays. The Contractor shall, by the diligent pursuit of the work, ensure that the work will be completed within the Contract time.

SECTION VII: LABOR AND WAGES

ARTICLE 44. EMPLOYEES, WORK DAY, APPRENTICESHIP AND NON-DISCRIMINATION.

- (a) **Skilled Workers.** The Contractor and all subcontractors shall employ only workers skilled in the work.
- (b) **Character of Workers.** Anyone employed on the project by the Contractor or any subcontractor who in the opinion of the Conservancy Representative is incompetent, disorderly, or acts improperly shall be, upon written notification, dismissed from the project and not employed on any part of the work.
- (c) **Lawful Working Day.** No worker shall labor more than eight (8) hours during any one (1) calendar day and more than forty (40) hours during any one (1) calendar week. Longer employment is permitted under the law and then only upon such terms, conditions and requirements as provided and fixed by law. For violation of this provision, as provided in California Labor Code ' 1813, the Contractor shall forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work in violation of this provision.
- (d) **Apprenticeship Standards.** The Contractor shall comply fully with the requirements of California Labor Code ' 1777.5 regarding employment of registered apprentices. If the Contractor willfully fails to comply with this code section, the Contractor shall be denied the right to bid on any Conservancy contract for a period of one (1) year from the date of non-compliance determined by the California Administrator of Apprenticeship. When the Conservancy receives notice that the Contractor is not in compliance with apprenticeship standards, the Conservancy shall withhold from Contract payments fifty dollars (\$50) for each day the Contractor is not in compliance, which funds may be released to the Contractor upon order of the Administrator or upon completion of the Contract.
- (e) **Non-Discrimination.** The Contractor hereby certifies that it will not unlawfully discriminate in its employment with regard to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual preference, or age; that all federal, state and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principle of equal opportunity in employment will be demonstrated positively and aggressively. The Contractor further certifies that it shall require the compliance of its subcontractors on the work with all of the provisions of this ARTICLE 44(e). The Contractor hereby acknowledges its understanding that this Contract may be canceled, terminated or suspended in whole or in part and the Contractor and/or its subcontractors declared ineligible for future contracts with the Conservancy, in the event the Contractor and/or its subcontractors are found in non-compliance with the terms hereof.

ARTICLE 45. WAGE SCALE

- (a) **General Prevailing Wage Rates.** The current issue of the Director of the Department of Industrial Relations for the State of California GENERAL PREVAILING WAGE RATES for straight time, overtime, Saturday, Sunday, and holidays is herein incorporated as part of this Contract. These rates include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or training. Any and all revisions to the

GENERAL PREVAILING WAGE RATES that take effect during the Contract shall be adopted as part of this Contract. A copy of the GENERAL PREVAILING WAGE RATES is available for review at the office of the Conservancy Representative.

For those crafts or job classifications requiring special prevailing wage determinations, please contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 603, San Francisco, CA 94101, (415) 703-4281.

Holiday wage rates shall apply to holidays recognized in the collective bargaining agreement of the particular craft or classification concerned.

The Contractor shall post Prevailing Wage Rates on job site.

The Conservancy will not recognize any claim for additional compensation because of payment by the Contractor of any wage above the prevailing wage rate. The possibility of wage increases is an element to be considered by the Contractor in determining its bid, and will not under any circumstance be considered as the basis for claims against the Conservancy.

- (b) Contractor and Subcontractors Compliance. The Contractor and each subcontractor shall pay general prevailing per diem wages (including holiday and overtime pay) to all of their workers on the project.
- (c) Penalty. The Contractor shall forfeit as penalty to the Conservancy five hundred dollars (\$500.00) for each calendar day or part day for each worker who is paid less than the general prevailing wage rates. The Contractor shall pay any worker who was paid less than general prevailing wage rate an amount equal to the difference between the prevailing wage rate and the amount paid to the worker per California Labor Code ' 1775.
- (d) Payroll Record Requirements. The Contractor and each subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and the actual per diem wages paid to each journeyman, apprentice or helper employed on the project per California Labor Code ' 1776. Payroll records shall be available for inspection at all reasonable hours by the Conservancy Representative and a copy shall be available to the employee, the employee's representative, the California Division of Labor Standards Enforcement and the California Division of Apprenticeship Standards. If a complaint is filed with the Conservancy or the Division of Labor Standards Enforcement alleging that the Contractor or subcontractor has paid less than prevailing wage on the project, the Conservancy shall withhold from payment requests to the Contractor an amount equal to one hundred and twenty-five percent (125%) of the amount claimed until the allegation is settled.

The Contractor and all subcontractors shall submit on forms approved by the Conservancy Representative a certified copy of their payroll records along with any and all payment request(s). Certified payrolls shall be current to within one (1) week of the payment request. No payment request shall be made by the Conservancy without current, complete and accurate certified payroll records on file with the Conservancy Representative. The Conservancy shall retain a copy of certified payroll records for ninety (90) calendar days after completion of the Contract. The Conservancy may charge a reasonable fee for copying any records.

SECTION VIII: CHANGE ORDERS

ARTICLE 46. WORK CHANGES.

- (a) Conservancy Right to Require Changes. The Conservancy reserves the right to require alterations, additions to and/or deletions from the work. If the Conservancy Representative determines that a change ordered by the Conservancy cause an increase or decrease in the Contractor's costs or time required for completing the Contract, appropriate adjustments to the Contract price and/or time shall be made. The Contractor shall not be entitled to any compensation for extra work or time to finish the Contract without a written directive from the Conservancy. Failure to agree on an adjustment of the Contract price or time extension shall not excuse the Contractor from proceeding with the work as changed.
- (b) Contract Price Adjustments. Contract price adjustments for work covered by a change order shall be made as follows:
 - (1) Extra work compensation shall be computed on the basis of one or more of the following:
 - a. Unit prices, as shown on the Formal Bid Proposal.
 - b. Lump sum, as agreed upon by the Conservancy and the Contractor based on the estimated cost of the extra work plus fixed fees as follows.
 - 1. The estimated cost is the sum of the following:
 - A. Labor - Gross wages or salaries (including authorized overtime) of the Contractor and/or subcontractor employees directly employed on the extra work.
 - B. Labor Fringe Benefits - Additional direct labor expenses of workers (i.e., health & welfare, pension, vacation/holidays and training, and all benefits required by collective bargaining agreements).
 - C. Labor Surcharge - Additional Social Security and unemployment taxes as required by State and Federal laws (maximum 17.0% allowed).
 - D. Materials - Contractor furnished materials permanently incorporated by the extra work (including sales tax). The Contractor shall not gain from Conservancy furnished materials.
 - E. Miscellaneous - Specialized tools, appliances, implements, utilities, royalties, permits, inspections, fees, etc., exclusive to the extra work.
 - F. Equipment - On site equipment and rental equipment used in the extra work.
 - G. Bonds - Costs to cover additional payment and performance bond charges (maximum 1% allowed).

2. The "fixed fee" shall be a percentage of the estimated costs and shall constitute full compensation for all costs and expenses not listed above. These charges for overhead and profit shall not exceed the following:
 - A. Twenty percent (20%) of the estimated cost of labor.
 - B. Fifteen percent (15%) of the estimated cost of materials and miscellaneous costs.
 - C. Ten percent (10%) of the estimated cost of owned or rented equipment.
 3. The limits upon overhead and profit shall be as follows:
 - A. Overhead and profit for the Contractor or any subcontractor who has the work performed by a subcontractor or second tier subcontractor shall not exceed five percent (5%) of the extra work cost.
 - B. Overhead and profit for all contract tiers shall never exceed fifteen (15%) of the actual extra work.
 - C. The responsibility of distributing extra work overhead and profit among contractor tiers rest solely with the Contractor.
 4. Upon Award of Contract, at the Preconstruction Meeting, the Contractor may request in writing, the Conservancy Representative to approve higher costs for Labor Surcharge and Bonds. The Conservancy Representative shall review the required costs and promptly notify the Contractor of his decision. The Conservancy Representative's determination of allowable costs shall be final and binding.
- c. Time and Materials, as observed and agreed upon, on a daily basis by the Conservancy representative and the Contractor for labor, materials and equipment used to accomplish the extra work. This daily log shall be signed by both parties and will be the basis for a subsequent change order. The Conservancy Representative's determination of allowable costs shall be final and binding. Labor rates to be prevailing wages.

(2) For work deleted, the reduction in the Contract price shall be computed as follows:

- a. Unit price(s).
- b. A lump sum agreed upon by the Contractor and the Conservancy Representative based on the estimated cost of the deleted work. No fixed fee shall be added to the estimated cost.
- c. If the parties are unable to agree on the reduction in the Contract price, the Conservancy Representative shall make a final and binding determination of the reduction in price based upon the estimated cost savings to the Contractor.

(c) Contract Time Adjustments. Adjustments in time allowed for completion of the work due to change orders shall be made by one of the following:

- (1) Agreed time extension or reduction.
- (2) If the parties are unable to agree on the time extension or reduction, the Conservancy Representative shall make a final and binding determination of the time extension or reduction allowed for the change.

ARTICLE 47. CLAIMS FOR EXTRAS.

If the Contractor claims that any instructions received from the Conservancy involve extra cost or time, the Contractor shall give the Conservancy Representative written claim for extra work before proceeding with the work. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

SECTION IX: PAYMENT PROVISIONS

ARTICLE 48. CONTRACT PRICE BREAKDOWN.

The Contractor shall submit to the Conservancy Representative a Contract Price Breakdown, itemizing the estimated cost of each division of work together with the Contractor's allowance for profit, insurance and overhead expense. The total shall equal the Contract price. The breakdown, when approved by the Conservancy Representative, shall be the basis for determining the value of work performed for the purpose of executing monthly payment requests. Should the Lump Sum Bid be sufficiently itemized, it may serve as the Price Breakdown.

ARTICLE 49. PAYMENT REQUESTS.

The Contractor shall submit one (1) copy of a monthly payment request based upon ARTICLE 48, Contract Price Breakdown to the Conservancy Representative on forms provided by the Conservancy. Data substantiating the Contractor's right to payment may be required. Payment requests shall be made for work completed and materials delivered and properly stored at the site during the month. Payment for materials stored at the site shall be supported by documentation from the Contractor establishing Conservancy's title to the materials. Contractor shall obtain approval of payment amounts from Conservancy Representative prior to submittal of payment request.

ARTICLE 50. PAYMENT

- (a) Monthly Payment Requests. When the Contractor submits a monthly payment request, the Conservancy Representative shall issue payment to the Contractor for the amount the Conservancy Representative agrees is properly due.
- (b) Monthly Payment Request Not Acceptance of Work. Monthly payment requests shall not be considered as acceptance by the Conservancy of the whole or any part of the work done up to that payment.
- (c) 10% Retention. Following approval by the Conservancy Representative of the Contractor's payment request, the Conservancy shall retain as security for the fulfillment of the Contract, ten percent (10%) of the approved amount of the payment request.
- (d) Substitute Securities. The Contractor may elect to substitute securities for monies withheld by the Conservancy to ensure the performance of the Contractor. The evaluation, handling, and deposition of substituted securities shall be as set forth in the California Public Contract Code '22300.
- (e) Final Retention Payment. After acceptance of the work, the Contractor shall submit to the Conservancy Representative a request for the retained funds. The retained funds of the total Contract price shall be paid (except as otherwise provided in these Contract Documents) thirty-five (35) calendar days after the date of the Conservancy's formal Notice of Acceptance of all work under the Contract and the receipt of all waivers and releases from subcontractors and suppliers.
- (f) Agreement to Assign. In compliance with the California Government Code '4552 and the California Public Contract Code '7103.5, the text of those codes are herein reproduced in full (understand the terms "Owner" and/or "Awarding Body" within this text is interpreted to mean the Conservancy.):

GC ' 4552--Submission of Bids: Agreement to Assign: In accordance with Section 4552 of the Government Code, Bidder shall conform to the following requirements. In submitting a bid to the Owner, Bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec.15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the Bidder for sale to the Owner pursuant to the bid. Such assignment shall be made and become effective at the time the Owner tenders final payment to the Bidder.

PCC ' 7103.5--In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec.15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

ARTICLE 51. PAYMENTS WITHHELD.

- (a) Protection of Loss to Conservancy. The Conservancy Representative may withhold or nullify the whole or part of any payment request to protect the Conservancy from loss on account of:
 - (1) Defective work not remedied.
 - (2) Third party claims filed or reasonable evidence indicating probable filing of claims.
 - (3) Failure of the Contractor to make payments properly owed subcontractors for materials, equipment or labor.
 - (4) Reasonable evidence that the Contract cannot be completed for the unpaid balance.
 - (5) Damage to the Conservancy or to another contractor.
 - (6) Default of the Contractor in the performance of terms of the Contract.
 - (7) Violation by the Contractor of the apprenticeship requirements or the prevailing wage rate described in SECTION VII of these General Conditions.
 - (8) Reasonable evidence that the work will not be completed within the Contract time.
- (b) Claim by Subcontractor, Worker, Etc. Any subcontractor, supplier of material or labor, worker or anyone having any claim against the Contractor for work done or material furnished on the work may give notice of such claim to the Conservancy, who may withhold up to 125% of the claim from payments due the Contractor until the claim is settled. The provisions of this ARTICLE 51(b) shall not lessen or diminish the right or duty of the Conservancy to withhold payments under the provisions of the laws of the State of California.

ARTICLE 52. CLAIMS.

- (a) Evidence of Payments. The Contractor agrees that upon request of the Conservancy Representative the Contractor shall submit a sworn statement setting forth the work done or material furnished by subcontractors and suppliers, and the amount due and to become due to each. Before the final payment the Contractor shall, if requested, submit to the Conservancy Representative a complete set of lien releases or vouchers showing payments made for materials and labor used in the work.
- (b) Releases; Receipts. When required, the Contractor shall deliver a copy of receipts to the Conservancy Representative and an affidavit that the receipts include all labor and material for which a claim could be filed. Neither the final payment nor the retained percentages will be due the Contractor before all required receipts are received. If any subcontractor refuses to furnish a receipt in full, the Contractor may furnish a bond satisfactory to the Conservancy that indemnifies the Conservancy against any claim, cost or damage, including all legal fees. The Contractor shall refund to the Conservancy all monies that the Conservancy may be compelled to discharge for any unsatisfied claim, including all costs and reasonable attorney's fees.

- (c) Claims Resolution. Claims between the Contractor and the Conservancy arising from contracts valued at \$375,000.00 or less, shall be governed by the provision of the California Public Contract Code '20104 et seq. which provides special rules for meet and confer, mediation, and arbitration.

SECTION X: INSPECTION; TESTING; CORRECTIONS; GUARANTEE

ARTICLE 53. INSPECTION.

- (a) Conservancy Access. The Conservancy and its duly authorized agent(s) shall have unrestricted access to the work whether it is in preparation or in progress. The Conservancy and its duly authorized agent(s) shall at all times reserve the right to inspect and/or test for compliance with the Contract Documents any or all materials and/or work provided to or installed in the work. The Contractor shall provide safe and proper facilities for access and inspection.
- (b) Required Inspections and Testing. If any law, regulation, ordinance, public authority, specification or the Conservancy Representative requires any part of the work to be specially inspected or tested, the Contractor shall notify the Conservancy Representative three (3) working days prior to the work's readiness for testing or inspection.
- (c) Inspection of Phases. The Contractor shall notify the Conservancy Representative two (2) working days in advance of each phase set forth in the Plans or Specifications for inspection.
- (d) Work, Examination; Re-examination. The Conservancy Representative may order and the Contractor shall comply with the examination or re-examination of work. The Contractor shall not cause any work to be covered or enclosed without approval of the Conservancy Representative. Any work enclosed or covered before approval shall be uncovered. After inspection the Contractor shall restore all work to original condition at the Contractor's expense.
- (e) Overtime Inspection. The Contractor may request from the Conservancy Representative to work on a Saturday, Sunday, legal holiday or past normal working hours as established at the preconstruction meeting, two (2) working days in advance. If approved, the Contractor shall pay all Conservancy expenses for providing this special inspection at the rate set by the Conservancy Representative. A minimum of eight (8) hours shall be charged for working on these special days, and they will be charged against the Contract time.

ARTICLE 54. TESTING/INSPECTION SERVICES.

- (a) Conservancy. The Conservancy Representative may require specialized test(s) and/or inspection(s) performed by an independent testing/inspecting service of its choice. The Conservancy shall pay for initial specialized test/inspection. The Contractor shall pay for any re-test/re-inspection that results from failing test or inspection due to nonconformity with Contract requirements.
- (b) Contractor. When the Contractor is required by Contract or regulation of government authority having jurisdiction over the work to provide certification by an independent testing/inspection service, the Contractor shall assume all costs. Any independent testing/inspection service proposed by the Contractor must be approved by the Conservancy Representative prior to employment. All tests required by the Contract shall be made promptly so as not to delay the work. The Contractor shall furnish three (3) copies of all resulting testing/inspection reports.

ARTICLE 55. CORRECTION OF WORK.

- (a) Removal, Replacement. The Contractor shall promptly remove from the site all materials or work rejected by the Conservancy Representative. The Contractor shall promptly replace material or work without expense to the Conservancy and shall make good all work destroyed or damaged by removal of condemned work.
- (b) Conservancy Right to Remove Material, Deduct. If the Contractor does not remove rejected work or materials within a time prescribed by the Conservancy Representative, the Conservancy may remove and store salvageable work or materials at the Contractor's expense. If the Contractor does not pay the expense of removal within five (5) calendar days, the Conservancy may after providing ten (10) calendar days' written notice, sell work or materials at auction or private sale. The Conservancy shall give an accounting of the net proceeds from the sale after deducting all costs and expenses including auction or sale expenses.

ARTICLE 56. DEDUCTIONS FOR UNCORRECTED WORK.

If the Conservancy determines not to require corrective work, the Contract price shall be reduced by an amount equal to the estimated cost of making the work conform to the Contract Documents as determined by the Conservancy Representative, plus an administrative fee of fifteen percent (15%) of that cost.

ARTICLE 57. AS-BUILT DOCUMENTS.

- (a) The Contractor shall maintain a complete and up-to-date set of As-Built drawings and supplementary documents which shall be corrected daily and show every change from the original drawings and specifications, as well as the exact locations, sizes and kinds of equipment as actually installed. This set of drawings and documents shall be kept on site and shall be used as a record set.
- (b) These drawings shall also serve as work progress sheets, and neat and legible annotations shall be made daily as the work proceeds, showing the work as actually installed. These drawings shall be available at all times for inspection and shall be kept at the site in a location designated by the Conservancy Representative.
- (c) Projects which are large and/or complex as determined by the Conservancy Representative, or are largely underground such as utilities and irrigation projects, and whose locations cannot be verified by reference to previous staking, shall be professionally surveyed, at

Contractor's expense, when trenches are open and when locations and appurtenances can be positively identified, as approved by Conservancy Representative.

- (d) The Contractor will meet on a regular basis with the Conservancy Representative to confirm the correctness and completeness of As-Built documents. Under no circumstances shall trenches be backfilled until the As-Built plans have been verified by the Conservancy Representative. If, in the sole opinion of the Conservancy Representative, the contractor fails to provide accurate and verifiable information, a survey crew may be called in at the Contractor's expense.
- (e) No payment request will be processed until the Conservancy Representative verifies that the As-Built are current and correct by initialing and dating said documents.
- (f) Before the date of the final inspection, the corrected and completed information shall be transferred to a clean, reproducible transparency provided by the Conservancy Representative. This drawing shall be professionally drawn with good draftsmanship standards employed. Features which the As-Built entries are to replace shall be removed from the original transparencies and the resultant drawing shall contain only the information (alignments, grades, features, etc.) that details the work as actually constructed or installed.
- (g) Both the record set and reproducible sets shall be submitted to the Conservancy Representative for review. Final payment shall be withheld until As-Built are accepted.

ARTICLE 58. FINAL INSPECTION AND ACCEPTANCE OF WORK.

- (a) When the work is complete and site cleaned of all debris and construction material, the Contractor shall request the final inspection from the Conservancy Representative. The Conservancy shall make the final inspection within ten (10) calendar days, weather permitting. If it is determined that the Contract has been completed, the Conservancy Representative shall formally accept the work in writing. Upon acceptance, the Contractor shall be relieved of maintaining and protecting the work unless required otherwise by the Contract Documents. If the Conservancy determines that the work is not complete, the Contractor shall be notified in writing of the deficiencies and the procedure for final inspection shall again be initiated by the Contractor after the deficiencies are corrected.
- (b) The work may be substantially completed and accepted with a "minor" punch list as determined by the Conservancy Representative. The punch list items are to be completed within the 35 day retention period, otherwise the Contractor waives any and all rights to the retention monies withheld by the Conservancy necessary to complete these items. The Conservancy Representative may hire another contractor to complete the work. **All costs, including inspection costs and administrative costs for punch list items, will be charged against the monies withheld and deducted from the contract price.**

ARTICLE 59. GUARANTEE; CORRECTION OF WORK AFTER FINAL PAYMENT.

- (a) In addition to any guarantees required by the Plans and Specifications, the Contractor guarantees all work and materials furnished under this Contract against defects for one (1) year from the date of final acceptance. The Contractor shall be liable for all damages and income lost resulting from defects. The Contractor shall, within seven (7) calendar days from receipt of written notice, repair and/or replace any defects (ordinary wear and tear excepted) and any resulting damage at the Contractor's sole expense. In the event the Contractor fails to remedy any defects within seven (7) calendar days from receipt of written notice, the Conservancy may have defects remedied at the Contractor's expense. The Contractor shall pay the Conservancy for all costs, including an administrative fee of fifteen percent (15%) of that cost.

Nothing in this Contract shall relieve the Contractor from responsibility for latent defects, departures from the Contract, fraud or gross mistakes and damage resulting from any of the above.

- (b) When required by the Contract Documents, guarantees shall be in the form of the following, on the Contractor's own letterhead:

"GUARANTY-WARRANTY FOR _____"

We hereby warrant and guaranty that the _____ installed in the _____ has been done in accordance with the Plans and Specifications and that the work as installed will fulfill the requirements of the guaranty-warranty included in these specifications.

We agree to reimburse the Conservancy for any income lost and to repair or replace any or all of our work together with any other work which may be displaced by so doing, that may prove to be defective in workmanship or material within one (1) year from the date of acceptance of the above-named project by the Conservancy, without any expense whatsoever to the Conservancy, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the abovementioned conditions within seven (7) calendar days after being notified in writing by the Conservancy, we, collectively and separately, do hereby authorize the Conservancy to have such defects repaired and made good at our expense, and will honor and pay all costs and charges, including the Conservancy administrative fee of fifteen percent (15%) of the total cost, therefore upon demand.

Signed: _____
Subcontractor

Countersigned: _____
Contractor

SECTION XI: TERMINATION; ABANDONMENT

ARTICLE 60. TERMINATION FOR DEFAULT AND ACTS OF NATURE.

- (a) **Grounds.** The Conservancy may terminate this Contract for any of the following causes of Default or Acts of Nature:
- (1) The Contractor breaches any provision of the Contract.
 - (2) The Contractor makes an assignment to creditors.
 - (3) The Contractor files for bankruptcy.
 - (4) Appointment of a receiver due to the Contractor's insolvency.
 - (5) In the sole opinion of the Conservancy Representative the Contractor fails to supply adequate or proper workers, materials, tools and equipment.
 - (6) The Contractor disregards written instructions from the Conservancy Representative.
 - (7) In the sole opinion of the Conservancy Representative the Contractor refuses or fails to prosecute the work with the diligence that assures completion of work within the contracted time period.
 - (8) The work is damaged by earthquake or tidal wave as provided in ARTICLE 28(b).
- (b) **Notice.** The Conservancy shall give the Contractor and its sureties written notice when grounds for termination by Default exists. The notice shall set forth the Default and a time for correction. The Contractor's right to do the work shall automatically terminate if the Default is not corrected within the set time.
- (c) **Conservancy's Remedies.** Upon termination the Conservancy may: (1) require the Contractor's sureties to complete the work; or (2) take over the work and/or employ another contractor to complete the work. The Conservancy may use any and all materials, tools, equipment and appliances belonging to the Contractor which are on the project site and needed to complete the work.
- (d) **Payment after Termination.** If the Conservancy terminates the Contractor for Default, the Contractor shall not receive any payment before the entire work is complete and accepted by the Conservancy Representative. The Conservancy may assume and finish the work or hire another contractor to finish the work. The Conservancy will pay the Contractor any monies of the Contract (less retention) that remain after deducting for all damages and the full cost of finishing the work plus ten percent (10%) of said cost. The Contractor and/or the Contractor's sureties shall be liable to the Conservancy for all damages and cost plus ten percent (10%) of damage and cost above the Contract price.
- (e) Actions pursuant to this ARTICLE 60 shall not prejudice the Conservancy's other rights or remedies.

ARTICLE 61. ABANDONMENT.

- (a) **Conservancy's Right.** The Conservancy has the right to abandon or indefinitely postpone any part or all of the Contract at any time. The Conservancy Representative will give the Contractor written notice of abandonment specifying the extent and date of termination.
- (b) **Contractor's Obligation.** Unless otherwise directed in writing by the Conservancy Representative the Contractor shall after receipt of Notice of Abandonment:
- (1) Stop work under the Contract to the extent and date specified;
 - (2) Place no further orders for materials, services, or facilities except as required to complete the work not abandoned;
 - (3) Terminate and settle all orders and subcontracts that relate to the work abandoned;
 - (4) Settle all outstanding liabilities and claims arising out of abandonment to the satisfaction of the Conservancy Representative;
 - (5) Transfer title to the Conservancy and deliver as directed by the Conservancy Representative: all fabricated or unfabricated parts, works in process or complete, supplies, and all other materials produced or acquired in connection with the work abandoned; and complete or partly complete plans, drawings, information, and all other property required to be furnished to the Conservancy;
 - (6) Complete the work not abandoned;
 - (7) Protect and preserve property related to this Contract in the possession of the Contractor which the Conservancy has or may acquire; and
 - (8) Submit an application for final payment to the Conservancy Representative.
- (c) **Payment.** The Conservancy Representative shall issue payment to the Contractor for all work performed and materials provided plus any retention withheld up to the effective date of abandonment. Payment shall constitute the full amount due the Contractor by the Conservancy.

ARTICLE 62. ATTORNEYS' FEES.

Should either the Conservancy or the Contractor institute an action to enforce any of its rights hereunder, the prevailing party shall be entitled to reasonable attorneys' fees and the costs of said action as determined by the Court.

SECTION XII: MISCELLANEOUS

ARTICLE 63. ASSIGNMENT.

The Contractor shall not assign its rights or obligations under this Contract without the prior written consent of the Conservancy Representative, which consent shall not be unreasonably withheld. The Contractor shall not assign any monies due the Contractor without the written consent of the Conservancy. Any assignment or delegation without the written consent of the other party shall be void.

ARTICLE 64. EMERGENCIES.

In an emergency affecting the safety of life, the work or adjoining property, the Contractor shall take all necessary and proper steps to prevent any loss, injury or death. The Contractor shall make every effort to communicate with the Conservancy Representative and may be guided by the directions and/or advice of the Conservancy Representative. If the character of the emergency is such as to require action within a short time or circumstances render communication with the Conservancy impractical, the Contractor shall act independently and upon its own. The Contractor's emergency procedures will be subject to the direction and control of the Conservancy as soon as it is practical.

ARTICLE 65. TAXES.

The Contractor agrees and states that all taxes incidental to this Contract shall be paid by the Contractor and are included in the Contract price.

ARTICLE 66. FEDERAL MANUFACTURER'S EXCISE TAX.

The Conservancy is exempt from Federal Manufacturer's Excise Tax. The manufacturers of items subject to that tax are entitled to a refund or credit for such tax on presentation of the Conservancy's exemption certificate for items furnished exclusively to the Conservancy. The Contractor shall not be entitled to claim any additional monies for taxes paid where this exemption is available.

ARTICLE 67. ROYALTIES AND PATENTS.

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims of infringement of any patent rights or trademarks and shall save the Conservancy harmless from all loss thereof.

ARTICLE 68. AGREEMENT TO ASSIGN.

- (a) The Contractor and Subcontractors offer and agree to assign to the Conservancy all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act, arising from purchases of goods, services, or materials. This assignment shall be made and become effective at the time the Conservancy tenders final payment to the Contractor, without further acknowledgment by both parties.
- (b) If the Conservancy receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under California Government Code ' 4550 et seq., the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

ARTICLE 69. TITLES AND HEADINGS.

Titles and headings to Sections and Articles in the Contract Documents are introduced for convenience only and shall not be taken as a correct or complete segregation of the several units of materials and labor. No responsibility either direct or implied will be assumed by the Conservancy for omissions or duplications to the Contractor or any subcontractors due to real or alleged error in arrangement of material in the Contract Documents.

SUPPLEMENTARY CONDITIONS

01.1 General

- .1 The purpose of the Supplementary Conditions is to establish certain conditions particular to the control and execution of the work of this project. The priority of these Supplementary Conditions shall be as stated in Article 11 of the Agreement.
- .2 The General Conditions and the Supplementary Conditions shall apply to all the work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

01.2 Summary of Work

- .1 In general, the work consists of the furnishing of labor, equipment, materials, transportation and services necessary, required, or properly incidental to:
 - a. Mobilization/Demobilization
 - b. Clearing and Grubbing
 - c. Excavate Top 2' of Clay and Store in Separate Pile
 - d. Earthwork
 - e. 4"-6" Riprap
 - f. Pyramat
 - g. 80mil HDPE Geomembrane
 - h. Erosion Control
 - i. Hydroseed
 - j. Lath Staking

01.3 Additional Definitions

- .1 Add to General Conditions, Article 2. Definitions, the following:
 - a. Biologist – any duly authorized person designated by the Conservancy Representative including staff biologist or authorized consultant.

- b. Engineer – any duly authorized person designated by the Conservancy Representative including a staff engineer or authorized consultant.
- c. Project Manager – The Project manager is the Conservancy Representative. Authority of the Project Manager shall be to assure that all design issues are addressed and to meet with the Contractor on site.
- d. Survey Grade GPS Technology - GPS system capable of using Real Time Kinematics Stationing (RTK Station) technology with sub-centimeter accuracy.

01.4 Permits and Regulations

- .1 Agencies having jurisdiction over the project include:
 - a. The Conservancy will obtain all necessary regulatory permits for the project. Contractor shall comply with the conditions of all permits.
 - b. The Contractor will obtain an encroachment permit from the East Bay Regional Park District. Contractor shall not be required to pay any fees associated with obtaining the encroachment permit. Contractor shall comply with the conditions of the permit.

01.5 Applicable Codes and Standards

- .1 The following Codes and Standards shall be adhered to in the fabrication and installation of facilities described in these drawings and specifications. In the event of a conflict between pertinent codes and regulations and the referenced standards of these specifications, the provisions of the more stringent shall govern.
 - a. California Department of Transportation Standard Specifications. (Caltrans), latest edition. The system of measurements that will apply to this contract shall be the United States Standard Measures.
 - b. Additional requirements of local, county, state and federal governments.

01.6 Indemnification

- .1 The following agencies shall be added to Article 8, "Contractor's Indemnification of the Conservancy", of the General Conditions, and whenever the Conservancy is named, so shall these agencies be named:
 - a. East Bay Regional Park District

01.7 Insurance Requirements

- .1 The following agencies shall be required to be included as additional insured in accordance with Article 9, "Insurance Requirements", of the General Conditions, and whenever the Conservancy is named, so shall these agencies be named:
 - a. East Bay Regional Park District

01.8 Safety Precautions and Public Convenience

- .1 Staging areas shall be set up in areas indicated on the plans and/or as approved by the Conservancy Representative. These areas shall be closed to the public during construction. Contractor shall be responsible to ensure that the public has no access into the construction area. Contractor shall install barricades accordingly.
- .2 Speed limit on work site property is 10 m.p.h. Contractor shall post speed limit signs and direction signs for truck traffic as needed.
- .3 Contractor shall be responsible for preventing unauthorized access to the cottage and gardens throughout construction. Gate shall be locked at the end of each work day.

01.9 Environmental Protection

- .1 The Contractor's attention is directed to Article 20, "Project Cleanliness," Article 21, "Water and Air Pollution," and Article 23, "Hazardous Materials," of the General Conditions.
- .2 Contractor shall take all precautions necessary to prevent any pond or stream contamination.
- .3 Contractor shall park equipment over drip pans or absorbent materials.
- .4 All asphalt, concrete, wood, metal and other deleterious materials removed shall be disposed of off-site in a lawful manner.
- .5 The Contractor shall store all materials that are potential construction pollutants from the Contractor's operations in a lawful manner. The Contractor shall not fuel, service or make repairs to any equipment or vehicles within 100-feet of the top of bank draining into the any pond or stream area or the pond or stream.
- .6 The Contractor shall develop a pollutant containment plan and submit it to the Conservancy for review and approval at the project pre-construction meeting No Contract work shall begin at the site until the Conservancy approves the plan Principal elements of the plans shall include a minimum

the following Best Management Practices items.

- a. Identification and protection of all drainage swales, streams, swales and pond areas at or near the construction site and the appropriate measures to prevent sediment and pollutants from entering them.
- b. Proper storage of potential pollutants.
- c. Proper containment and cleanup procedures for accidental spills. Adequate materials for proper containment and cleanup shall be stored at the site.
- d. Proper waste disposal methods.
- e. Development of designated and contained washout areas for concrete.
- f. Off-site vehicle wash and designated on-site refueling area with spill containment in a bermed area only or as described in the Technical Specifications 03.5 if it is necessary to fuel on-site equipment.

01.10 Fire Hazards and Preventions

- .1 The following language from the Public Resources Code shall be added to Article 25 of the General Conditions:

4427. During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate any motor, engine, boiler, stationary equipment, welding equipment, cutting torches, tarpots, or grinding devices from which a spark, fire, or flame may originate, which is located on or near any forest-covered land, brush-covered land, or grass-covered land, without doing both of the following:

(a) First clearing away all flammable material, including snags, from the area around such operation for a distance of 10 feet.

(b) Maintain one serviceable round point shovel with an overall length of not less than forty-six (46) inches and one backpack pump water-type fire extinguisher fully equipped and ready for use at the immediate area during the operation.

This section does not apply to portable power saws and other portable tools powered by a gasoline-fueled internal combustion engine.

4431. During any time of the year when burning permits are required in an area, pursuant to this article, no person shall use or operate or cause to be operated in the area any portable saws, auger, drill, tamper, or other portable tool powered by a gasoline-fueled internal combustion engine on or near any forest-covered land, brush-covered land, or grass-covered land, within 25 feet of any flammable material, without providing and maintaining at the immediate locations of use or operation of the saw or tool, for firefighting purposes one serviceable round point shovel, with an overall length of not less than 46 inches, or one serviceable fire extinguisher. The Director for Forestry and Fire Protection shall by administrative regulation specify the type and size of fire extinguisher necessary to provide at least minimum assurance of controlling fire caused by use of portable power tools under various climatic and fuel conditions.

The required fire tools shall at no time be farther from the point of operation of the power saw or tool than 25 feet with unrestricted access for the operator from the point of operation.

4435. If any fire originates from the operation or use of any engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or any other device that may kindle a fire, the occurrence of the fire is prima facie evidence of negligence in the maintenance, operation, or use of such engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or other device. If such fire escapes from the place where it originated and it can be determined which person's negligence caused such fire, such person is guilty of a misdemeanor.

4442. (a) Except as otherwise provided in this section, no person shall use, operate, or allow to be used or operated, any internal combustion engine which uses hydrocarbon fuels on any forest-covered land, brush-covered land, or grass-covered land unless the engine is equipped with a spark arrester, as defined in subdivision (c), maintained in effective working order or the engine is constructed, equipped, and maintained for the prevention of fire pursuant to Section 4443.

(b) Spark arresters affixed to the exhaust system of engines or vehicles subject to this section shall not be placed or mounted in such a manner as to allow flames or heat from the exhaust system to ignite any flammable material.

(c) A spark arrester is a device constructed of non flammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that uses hydrocarbon fuels or which is qualified and rated by the United States Forest Service.

(d) Engines used to provide motive power for trucks, truck tractors, buses, and passenger vehicles, except motorcycles, are not subject to this section if the exhaust system is equipped with a muffler as defined in the Vehicle Code.

(e) Turbo charged engines are not subject to this section if all exhausted gases pass through the rotating turbine wheel, there is no exhaust bypass to the atmosphere, and the turbo charger is in effective mechanical condition.

01.11 Contractor's Transportation and Access

- .1 Ingress/egress to the project site shall be via Vasco Road, or as approved by the Conservancy Representative.
- .2 Contractor is responsible for any damage along the construction access during the course of construction.

01.12 Protection of Work and Property

- .1 Contractor shall provide and maintain protective devices on all pavement and concrete surfaces to protect surfaces. In the event of damage to pavement or concrete surfaces, Contractor shall be responsible for prompt repair to the satisfaction of the Conservancy Representative.

01.13 Recycling

- .1 The Contractor shall implement the Construction and Demolition Debris Waste Reduction and Recycling Requirements required by local permitting agencies.

01.14 Temporary Utilities and Sanitary Facilities

- .1 All utilities, including sanitary facilities, shall be provided by the Contractor at his expense in accordance with Article 26 (f), "Temporary Utilities and Facilities", of the General Conditions.

01.15 Materials

- .1 Each manufacturer's name, catalog number and trade name mentioned in this specification shall be deemed to be followed by the words "or equal".

- .2 Whenever such terms as “per manufacturer’s specifications” are used, they shall mean in strict accordance with the printed directions. If these directions conflict with these specifications it shall be brought to the attention of the Conservancy and the Conservancy’s instructions shall be obtained before proceeding with the work.
- .3 All materials shall be new and in perfect condition.
- .4 Material delivery, storage and handling:
 - a. Deliver all materials in a timely manner to insure uninterrupted progress of the work.
 - b. Store in such a manner as will preclude damage thereto and permit ready access for inspection and identification of each shipment.

01.16 Submittals

- .1 This requirement modifies submittal requirements in Information for Bidders paragraph 3.(c) and General Conditions, Article 14.(a) and (c).
 - a. Upon receipt of the written Notice of Award of Contract, Contractor shall prepare a submittal schedule (shop drawings, special construction equipment, material submittals, certifications, and samples) and submit the schedule to the Conservancy at the preconstruction meeting for review. Submittals shall be delivered to the Conservancy in accordance with the submittal schedule.
- .2 Submittals shall be required for all substitutions.
 - a. Each requested substitution shall be identified with the specified item it is intended to replace.
- .3 Refer to each division of the Technical Specifications for additional submittal requirements.
- .4 Submit three (3) copies of each submittal to the Conservancy for written approval. Only those materials and items of equipment so approved by the Conservancy shall be used.
- .5 Submittals shall contain the following technical data:
 - a. Tag, mark, or number by which item is identified by this Contract.
 - b. Complete documentation and comparison of proposed unit relating to all of the specified features, complete dimensional data, view, drawings and construction details.

- c. Complete installation, performance and technical data.
 - d. Manufacturer's sales literature.
 - e. Certification listings.
 - f. Installation/operation/maintenance manuals.
 - g. Any exceptions to the Contract Documents shall be clearly indicated.
- .6 All submittals, including material provided by subcontractors, shall be reviewed by the Contractor prior to submittal to the Conservancy. Submittals not signed by the Contractor will be returned without review.

01.17 Changes to Plans and Specifications

- .1 No changes shall be made to the plans and specifications unless approved in writing by the Conservancy. All requests for changes shall first be made on a Request for Information (RFI) form to the Conservancy. Any items on the approved plans and specifications which are not completed by the contractor shall be considered as dollar credits to the Conservancy. The actual dollar amount of the credit shall be determined by the Conservancy.

01.18 Meetings

- .1 The Project Manager may meet weekly with the Contractor. Discussions resulting in proposed changes to the construction documents shall be submitted by the Contractor as a Request For Information to the Conservancy.

01.19 Electronic Documents

- .1 The Conservancy may supply Electronic Documents (.pdfs of bid documents and Plans and CAD files used to create Plans) to the Contractor. These documents are provided at the Conservancy's option for the convenience of the Contractor. The Contractor may request Electronic Documents for a specific use; the Documents may then not be used for any other purpose. Electronic Documents are superseded by the paper Contract Documents. The Contractor shall carefully examine and compare Electronic Documents with the Contract Documents, notify the Conservancy of any discrepancies or inconsistencies, and obtain written clarification from the Conservancy before proceeding with the work.
- .2 Electronic Documents may not scale accurately and may vary significantly from the Contract Documents. If CAD files are used, Contractor must georeference CAD files with real-time survey data to obtain required accuracies. The Contractor is advised against using Electronic Documents to produce prints.

01.20 Preconstruction (General Conditions Article 14 (a) Preconstruction Meeting)

- .1 Paragraph (a) shall be revised to fifteen (15) days of Award to Contract.

01.21 Work Schedule

- .1 The Contractor's attention is directed to Article 15, "Work Schedule," of the General Conditions.
- .2 The Conservancy shall have the right to temporarily suspend work at the site if in the sole judgment of the Conservancy, the weather and site conditions are not suitable for the proper execution of the work.

01.22 Construction Operations Plan

- .1 The Contractor shall **submit** a detailed plan describing the proposed methods of demolition, excavation, filling, and concrete operation for approval by the Conservancy. As a minimum, the plan shall include:
 - a. A list of major equipment to be used.
 - b. A diagram of the site showing the plan of operation for excavating and filling, transporting material, including access routes (including truck routes), truck queuing and wash down areas.
 - c. Proposed work outside of regular working hours.
 - d. The need for temporary closure of public trails.
 - e. Dewatering plan if necessary.

01.23 Cleanup

- .1 In order to minimize traffic hazards and public nuisance arising out of Contractor's operations, Contractor shall ensure that adjacent improved surfaces stay free and clean of silt, tracked mud, dust, etc., coming from or in any way related to construction.
- .2 The Conservancy Inspector may determine that a traffic hazard or public nuisance requires an immediate cleanup. Such immediate corrective measures shall be at the expense of the Contractor.

01.24 Water Pollution

- .1 The dewatering of excavated areas is allowed to be discharged into the adjacent creek. Creek bank erosion and flowline siltation shall be prevented

by installing filter fabric at points of discharge. This operation plan shall be in accordance with the Best Management Practices (BMP).

01.25 Utilities

- .1 The Contractor's attention is directed to Article 26, "Utilities," of the General Conditions.

DESCRIPTION OF BID ITEMS

01.1 General

.1 The General Conditions and Supplementary Conditions shall apply to all work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

01.2 Scope of Work

.1 Furnish all labor, equipment, materials, storage, transportation and services required for the completion of the project in accordance with these Bid Documents.

01.3 Base Bid

.1 The Base Bid shall include all work as shown on the plans and/or described in the specifications. Unless specifically provided in the Plans, the responsibility for determining the quantities of work of the lump sum bid item rests with the Contractor.

.2 The lump sum Base Bid are ten (10) individual items as described below:

- a. Base Bid Item No. 1: Mobilization/Demobilization
- b. Base Bid Item No. 2: Clearing and Grubbing
- c. Base Bid Item No. 3: Excavate Top 2' of Clay and Store in Separate Pile
- d. Base Bid Item No. 4: Earthwork
- e. Base Bid Item No. 5: 4"-6" Riprap
- f. Base Bid Item No. 6: Pyramat
- g. Base Bid Item No. 7: 80mil HDPE Geomembrane
- h. Base Bid Item No. 8: Erosion Control
- i. Base Bid Item No. 9: Hydroseed
- j. Base Bid Item No. 10: Lath Staking

01.4 Unit Price Items

.1 Each Unit Price Bid Item may be used by the Conservancy to add or deduct work during the period of the Contract, at the sole discretion of the Conservancy. The unit prices shall be for adding or deleting items from the total contract amount as awarded.

.2 The Unit Price Bid Items are broken down into one (1) individual item as described below:

- a. Unit Price Item No. 1: Any unanticipated additional earthwork on a cubic yard basis required to complete pond project.

Vasco Caves Souza I HCP Pond Project

INDEX TECHNICAL SPECIFICATIONS

Note: These Specifications are in addition to requirements for the project presented in: Civil Plans Prepared for the Project by: Carlson, Barbee & Gibson, Inc. The terms “Conservancy”, “Biologist” and “Engineer” are defined in the Civil Plans.

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DIVISION 01: MOBILIZATION AND DEMOBILIZATION

01.1 General

1. The General Conditions and the Supplementary Conditions shall apply to all of the work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

01.2 Summary of Work

1. Provide all materials, labor and equipment necessary to complete all work as shown on the drawings and as specified herein, including, but not limited to, the following:
 - a. Mobilization
 - b. Demobilization

01.3 Submittals

1. None

01.4 Materials

1. None

01.5 Workmanship

1. Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the project site; for the establishment of all other facilities necessary for work on the project; and for all other work and operations which may be performed or costs incurred prior to beginning work on the project site.
2. Demobilization shall consist of all work required to prepare personnel, equipment, facilities, supplies, and incidentals for return trip, and removing the same from the project site at the completion of the contract work, including cleaning up any staging and storage areas used in the execution of the work, and restoring these areas and any access roads to pre-existing conditions.
3. All debris, garbage and scraps including non-salvageable project materials (e.g. HDPE, Pyramat, etc) shall be removed from project site upon completion of the project to a suitable landfill location. Salvageable project materials shall also be removed from the project site by the Contractor to a location in Contra Costa County to be specified by the Conservancy.

4. The Contractor's equipment used to perform this work shall be of sufficient size and efficiency to meet all job requirements and will be subject to approval of the Conservancy Representative.
5. Water is not available on site. The Contractor shall supply water needed for the project. Water shall not be taken from natural water sources onsite (i.e. ponds, streams, springs). The Contractor shall not discharge water onsite except as needed for construction activities and dust control. Discharge of surplus or extra water shall not occur onsite at any time.

DIVISION 02: EARTHWORK

02.1 General

1. The General Conditions and the Supplementary Conditions shall apply to all of the work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

02.2 Summary of Work

1. Provide all materials, labor and equipment necessary to complete all work as shown on the drawings and as specified herein, including, but not limited to, the following:
 - a. Clearing, grubbing, and grading the project site to the contours and elevations shown on the drawings.
 - b. Re-applying clay over the excavated pond with stockpiled clays and compacting clays to achieve final grades. Clay application and Compaction further discussed in 02.5 (3, 4, and 5) below.

02.3 Submittals

1. None. Finished product to be based upon Biologist approval.

02.4 Materials

1. Fill material to construct pond liner and berm shall:
 - a. Be excavated onsite;
 - b. Be generated from below the stripped organic layer;
 - c. Contain no stripped organic material and no more than 3-percent organic content by volume; and

- d. Contain no more than 15 percent (by weight) rocks or lumps greater than 2½-inches in greatest dimension unless otherwise specified on Sheet 2. Rocks or lumps shall be broken up and stones, pieces of crushed rock or lumps which cannot be readily broken up shall be removed to fulfill the above criteria.
2. Water supplied by Contractor for soil compaction.

02.5 Workmanship

1. Contractor shall layout the clearing and grubbing limits with orange painted lath stakes installed a minimum of 3 feet above grade prior to beginning site clearing for approval by the Conservancy.
2. Upon completion of clearing and grubbing for pond construction, areas shall be left in a neat, clean condition to receive subsequent work.
3. Strip and stockpile soils:
 - a. After removing 3” organic layer and stockpiling, stockpile next 2+ feet of lean clay layer (darker soil) as field verified under direction of Biologist. Stockpile locations indicated on Sheet 2 of the plans.
 - b. Over excavate a total of 2.5 feet below finished grade of pond. Stock pile excavated sandy clay soils from beneath darker clays for berm creation and for final 6 inch layer over clay-lined pond bottom and sides. Stockpile sandy clays in stockpile location indicated on Sheet 2 of the plans.
4. After over-excavating 2.5 feet deeper than finished grades, scarify top 6 inches of all areas to receive fill material. Re-apply clay (darker soil from clay stockpile) over the excavated pond on both pond bottom and side slopes per Sheet 2 of the plans to a finished thickness 6 inches less than final grade. Contractor shall place the onsite fill material in 6” maximum lifts. Compact clay layer to 90 percent relative compaction. Final finished elevation achieved through re-deposition of over-excavated sandy clay found beneath darker clays (light colored soil). Compact final 6 inch sandy clay to 85 percent relative compaction to achieve final pond elevations. Contractor shall measure soil compaction in accordance with ASTM test method D1557. Field Density testing shall be performed with ASTM test designation D2922 and D3017 (nuclear probe method). Conservancy will verify compaction in the field using Contractor’s equipment.
5. Upon reaching all finished grades for pond, reapply 3” organic layer scalplings over all disturbed upland areas per Sheet 4 of the plans.
6. Implement all required erosion control per Sheet 4 of the plans and Division 03 and 3.5 below.

7. Contractor shall construct to meet finish grade as shown on the drawings. Vertical accuracy shall be +/- 0.1 foot. Horizontal accuracy shall be +/- 0.5 foot.
8. GPS technology may be used in lieu of a licensed surveyor or civil engineer provided it is Survey Grade GPS Technology that utilizes an established base station, and base elevations are pulled from control points established by the Conservancy engineer. Contractor may use Survey Grade GPS Technology for relative positioning of pond and pond features such as the spillway, berm, and pond grade changes. Vertical elevations of pond features shall be obtained using a Laser Level taken off of original, real-time grade elevations. Any deviations from this procedure must be approved by the Conservancy.
9. Dust control during all earthwork shall conform to Section 10 of the CalTrans Standard Specifications.

DIVISION 03: EROSION CONTROL

03.1 General

1. The General Conditions and the Supplementary Conditions shall apply to all of the work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

03.2 Summary of Work

1. Provide all materials, labor and equipment necessary to complete all work as shown on Sheet 4 of the plans and as specified herein, including, but not limited to, the following:
 - a. Installation and maintenance during the project of the silt fence, staking, and erosion control check dams (as necessary) per Sheet 4 of the plans. Upon project completion, just prior to hydroseeding, these materials shall be removed from the project site by the Contractor unless otherwise directed in writing by the Biologist. Any silt fences that remain under the explicit written direction of the Biologist, shall be removed by the Conservancy at a later date.
 - b. Installation of the hydroseed.
 - c. Provision of a construction staging and refueling area. Contractor to provide refueling blanket.

03.3 Submittals

1. Product data and planting mix for hydroseed areas. Provide to Conservancy prior to grading.
2. Product data for silt fence, and check dams. Provide to Conservancy prior to grading.

3. Product data for portable fueling blanket per Sheets 2 and 4 of the plans. Provide to Conservancy prior to grading.

03.4 Materials

1. Water supplied by Contractor for dust control.
2. Silt fencing shall be Mirafi Envirofence 100X or equal.
3. Straw wattles for check dams.
4. Portable fueling blankets
5. Hydroseed mix shall be as presented in 3.4(5)(see below). No substitution in seeds shall be allowed without permission of the Conservancy.

- A. HYDROSEED MIX FOR UPLAND DISTURBED AREAS (SEE SHEET 4 OF THE PLANS):** *Do not hydroseed the created pond below the invert elevation of the spillway with this seed mix PER DIRECTIONS ON SHEET 4. Only upper banks (above invert elevation of the spillway) of the pond and surrounding disturbed areas. See below for wetland seed mix to be used on pond bottom.*

| <u>Seed Type</u> | <u>Approximate Seeding Rate</u> |
|---|---------------------------------|
| Blue wildrye (<i>Elymus glaucus</i> - Anderson variety) | 12 lbs/acre |
| Creeping wildrye grass (<i>Leymus triticoides</i> – Rio or White Lake) | 6 lbs/acre |
| Purple needle grass (<i>Nassella pulchra</i> – Los vaqueros) | 8 lbs/acre |
| Meadow barley (<i>Hordeum brachyantherum californicum</i>) | 10 lbs/acre |
| Valley gumplant (<i>Grindelia camporum</i>) | 4 lbs/acre |

- 1) Seed mix shall be applied at a minimum rate of 40 pounds per acre.
- 2) No fertilizer shall be used on this site.
- 3) Rice straw matting shall be placed over hydroseed mix on slopes greater than 5 percent to prevent winter erosion (upland area only—see below for instructions for wetland seeding area). Where rice straw matting is to be applied to slopes, the seed mix prescribed immediately above shall be hand-raked into the soil prior to application of the straw matting. The straw shall be applied at a rate of 2 tons per acre.
- 4) Following the spreading of straw, and for areas where straw is not applied, an organic tackifier, such as M-binder, shall be sprayed (over the straw) using the techniques and application rate specified by the manufacturer.

4. Contractor shall maintain silt fencing through the duration of the contract to prevent sediment from discharging into the adjacent areas. Silt fencing shall be removed following completion of planting unless otherwise directed in writing by the Conservancy and/or Biologist (also see 03.2(a) above).
5. Contractor shall maintain the construction staging and refueling area through the duration of the contract to prevent soil contamination. Construction staging and portable refueling blankets shall be removed following completion of project.

DIVISION 04: SPILLWAY PROTECTION / RIPRAP PROTECTION

04.1 General

1. The General Conditions and the Supplementary Conditions shall apply to all of the work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

04.2 Summary of Work

2. Provide all materials, labor and equipment necessary to complete all work as shown on the drawings and as specified herein, including, but not limited to, the following:
 - a. Installing geotextile Pyramat or approved equivalent in pond spillway area. Approval required by Conservancy, Biologist, and Engineer.
 - b. Installing riprap per Sheet 2 of the plans, which includes installing it below finished contours and compacting a soil layer over the top of the installed riprap to final finished contour per specified finished grade elevations in Sheet 2 of the plans.

04.3 Submittals

1. Product data for the geotextile Pyramat or approved equivalent. Approval required from Biologist and Engineer.
2. Product data for riprap.

04.4 Materials

1. Pyramat or approved equivalent. Approval required from Biologist and Engineer.
2. Riprap material shall be quarry rock per CalTrans Standard Specification, paragraph 72-2.02, class of rock Number 3.

04.5 Workmanship

1. Contractor shall install the Pyramat per the instructions provided on Sheet 2 of the plans.
2. Contractor shall install Pyramat or approved equivalent according the manufacture's specifications for over-lapping the material, and as modified on Sheet 2 of the plans. Note that anchors and toe-in requirements are not per manufacturer's specifications.
3. Contractor shall place riprap in a double layer a minimum of eight inches thick according to Sections B.B. and C.C. on Sheet 2 of the plans.
4. Contractor shall construct to meet finish grade as shown on the drawings. Vertical accuracy shall be +/- 0.1 foot. Horizontal accuracy shall be +/- 0.5 foot.
5. GPS technology may be used in lieu of a licensed surveyor or civil engineer provided it is Survey Grade GPS Technology that utilizes an established base station, and base elevations are pulled from control points established by the Conservancy engineer. Contractor may use Survey Grade GPS Technology for relative positioning of pond and pond features such as the spillway, berm, and pond grade changes. Vertical elevations of pond features shall be obtained using a Laser Level taken off of original, real-time grade elevations. Any deviations from this procedure must be approved by the Conservancy.

DIVISION 05: BERM LINER

05.1 General

1. The General Conditions and the Supplementary Conditions shall apply to all of the work of every Division, Section, or Subsection of these specifications as if fully repeated in each.

05.2 Summary of Work

Provide all materials, labor and equipment necessary to complete all work as shown on the drawings and as specified herein, including, but not limited to, the following:

1. Installation of an 80 mil HDPE (High –Density Polyethylene) geomembrane vertically within berm, along the entire length of the berm. Key into competent subsoils minimum of 1 foot (also see 05.5(3)).

05.3 Submittals

1. Product data for HDPE (High –Density Polyethylene) geomembrane. Submit to Conservancy.

05.4 Materials

1. HDPE (High –Density Polyethylene) geomembrane.

05.5 Workmanship

1. HDPE (High –Density Polyethylene) geomembrane shall be installed according to sheet 2 of the plans.
2. Overlap sheets a minimum of 1' when overlapped.
3. Sheets to be placed a minimum of 1' below existing grade and 1 foot into competent side-slope where berm ties into side slope.
4. Contractor shall construct to meet finish grade as shown on the drawings. Vertical accuracy shall be +/- 0.1 foot. Horizontal accuracy shall be +/- 0.5 foot.
5. GPS technology may be used in lieu of a licensed surveyor or civil engineer provided it is Survey Grade GPS Technology that utilizes an established base station, and base elevations are pulled from control points established by the Conservancy engineer. Contractor may use Survey Grade GPS Technology for relative positioning of pond and pond features such as the spillway, berm, and pond grade changes. Vertical elevations of pond features shall be obtained using a Laser Level taken off of original, real-time grade elevations. Any deviations from this procedure must be approved by the Conservancy.

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AGREEMENT BETWEEN THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY AND EAST BAY REGIONAL PARK DISTRICT RELATING TO THE VASCO CAVES SOUZA I HCP POND PROJECT AT VASCO CAVES REGIONAL PRESERVE

This Agreement, dated _____, 2008, is by and between East Contra Costa County Habitat Conservancy (“Conservancy”) and East Bay Regional Park District (“District”; Conservancy and District and collectively are the “Parties.”

RECITALS

1. The Vasco Caves Regional Preserve is located in unincorporated Contra Costa County, California (the “Preserve”). The 617-acre portion of the Preserve commonly known as the “Souza I Property” and depicted on the map attached hereto as **Exhibit A** was acquired by District in 2005 (the “Property”), in part with funding from Lyon Homes as mitigation for a development project being performed by Lyon Homes.
2. Conservancy is administering implementation of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP”) in Contra Costa County, California. The HCP has been approved by District and Conservancy. The HCP has undergone environmental review and permitting by the United States Fish and Wildlife Service (the “Service”) and California Department of Fish and Game (the “Department” or “CDFG”). The HCP calls for the restoration and creation of wetlands within preserved lands.
3. Pursuant to the HCP, Conservancy and District have agreed to do the following:
 - a. Conservancy will construct a wetland restoration project on the Property and will perform certain management, maintenance and remedial measures relating thereto; and
 - b. District will perform certain management responsibilities relating to the Property; and
 - c. Conservancy will provide funds for construction of the wetland restoration project, Conservancy’s management and maintenance activities relating to the wetland restoration project, and certain of District’s management activities relating to the Property.
4. The wetland creation project will be located on a portion of the Property that is to be covered by a conservation easement funded by Lyon Homes to mitigate impacts of a development project performed by Lyon Homes. The conservation easement has been undergoing review by CDFG for several years. The Parties have discussed the potential for covering the entire Property with deed restrictions instead of such conservation easement, subject to concurrence and approval of CDFG. The Parties acknowledge that, whether the Property is covered by the conservation easement or by deed restrictions, the wetland creation project will be located in an area that is intended to be maintained by District in a natural state in

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perpetuity. District acknowledges that the wetlands creation project for the Property that is described in this Agreement is not inconsistent with any of the mitigation documents or requirements relating to the Lyon Homes mitigation project that relate to the Property.

5. District's Board of Directors, by Resolution No. 2008-5-91, authorized acceptance of Conservancy's proposed wetland creation project described in this Agreement on August 5, 2008.

AGREEMENT

Therefore, based on the foregoing recitals, Conservancy and District agree to the following:

1. **Construction of the Project.** Conservancy shall cause to be constructed by qualified and licensed contractors ("Contractor"), at Conservancy's sole cost and expense, the wetlands creation project that is described in **Exhibit B** attached hereto and incorporated herein by reference (the "Project"), in the location on the Property that is generally identified on the map of the Property that is attached hereto as **Exhibit A** and incorporated herein by reference. Detailed plans and specifications for the Project and the construction contract to be entered into by Conservancy for the Project ("Construction Contract") have been approved by District and Conservancy. Conservancy shall include the provisions set forth in **Exhibit C** attached hereto in any Construction Contract entered into by Conservancy with any Contractor to construct all or portions of the Project.

Conservancy shall use its reasonable good faith efforts to cause construction of the Project to be completed by December 31, 2008. Conservancy shall keep District apprised of the status of the Project throughout construction. Conservancy shall notify District promptly when construction of the Project is complete and, upon District's request, Conservancy staff shall inspect the Project with District staff to confirm completion to the Parties' reasonable satisfaction.

2. **Construction Management.** During Project construction, Conservancy shall oversee, coordinate and manage all work performed by Contractor to confirm all such work is performed in compliance with the Construction Contract and the approved plans and specifications and otherwise to Conservancy's and District's reasonable satisfaction. Conservancy shall promptly take reasonable and timely actions to ensure Contractor's compliance with the Construction Contract, including taking appropriate formal and informal actions to enforce the terms of the Construction Contract upon any actual or potential default by Contractor thereunder.

During Project construction, District will incur costs related to inspection of contractor's work and other related tasks. Conservancy agrees to provide District with \$5,000 within 14 days of executing this Agreement as compensation for these costs. Should there be significant changes in the Project circumstances, District may determine that such funding is inadequate for construction monitoring of the Project. Should this occur, Conservancy and District shall confer to reach mutual agreement on changes to the Project and/or increased compensation to District for increased construction monitoring costs.

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3. **Initial Management and Maintenance of Project.** During the initial five year period immediately following completion of construction of the Project (the “Initial Period”), the Parties shall cooperate in implementing a management plan for the completed Project (“Management Plan”). The Management Plan will be developed by the Parties prior to completion of construction and will generally provide as follows:

- (a) Conservancy, at Conservancy’s cost and expense, shall perform certain defined monitoring tasks and remedial measures relating specifically to the Project that are described in **Exhibit D**.
- (b) District shall perform day-to-day land management activities, including general site supervision, fence maintenance, grazing management, and trash removal.

A general outline of the additional components of the Management Plan, including the goals and objectives of the Project, is included in **Exhibit D** attached hereto.

4. **Initial Management Funding.** During the Initial Period, Conservancy shall provide to District funds in the sum of \$25,000 to pay those costs incurred by District for management and maintenance activities in accordance with the Management Plan (the “Conservancy Funds”). Conservancy shall pay such funds to District within thirty days of final acceptance of Project improvements by Conservancy. District shall not be responsible for performing management and maintenance tasks in excess of \$5,000 per year, or \$25,000 for five years. Should District determine that its costs may exceed \$5,000 in any year, it shall promptly notify Conservancy, and Conservancy and District shall meet and confer to determine how such costs may be reduced or to reach agreement on Conservancy providing additional funds to District.

District shall maintain written records of all expenses incurred and paid by District during each calendar year performing activities required or permitted of District under the Management Plan, including those paid with Conservancy funds, and, upon request, shall provide a written accounting of same to Conservancy on or before April 15 of the year immediately following the calendar year for such reporting.

5. **Permanent Management and Maintenance of the Project.** Conservancy and District shall meet and confer prior to the six month period immediately preceding the end of the Initial Period to accomplish the following:

- (a) To determine the Parties’ respective management and maintenance responsibilities for the Project following the Initial Period.
- (b) In the event the Project has not, or will not meet, the goals and objectives set forth in the Management Plan at the end of the Initial Period, as reasonably determined by Conservancy, Conservancy and District will determine the feasibility of undertaking mutually agreeable additional measures, which measures shall be at Conservancy’s sole cost, that are designed to improve the functionality of the Project to a level that will meet such goals and

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objectives. If it is not feasible to improve the functionality of the Project to a level that will meet such goals and objectives, as reasonably determined by Conservancy, Conservancy and District will determine mutually agreeable measures to remove the Project and/or cease maintenance of the Project, at which time the Parties' management obligations under this Agreement will terminate.

- (c) Conservancy and District will (i) analyze all costs incurred by the Parties during the Initial Period to implement the Management Plan, (ii) prepare an estimate of the costs associated with management, maintenance and monitoring of the Project following the Initial Period ("Future Management Costs"), and (iii) determine a mutually agreeable method for Conservancy to fund such costs related to the Project following the Initial Period, which methods could include a new annual reimbursement rate, establishment of an endowment for management of the Project, and/or including Future Management Costs in an endowment or annual contribution set up for management of the entire Property and neighboring properties that are covered by the same preserve management plan.

In the unlikely event that Conservancy and District cannot reach agreement on management, maintenance and monitoring of the Project following the Initial Period then District shall be discharged of any and all obligations to manage, maintain or monitor the Project.

6. **Permits.** Conservancy shall be responsible for obtaining any local, county, state, and federal regulatory approvals and permits required to construct and maintain the Project on the Property (collectively "Approvals"); provided, however, District will at all times cooperate fully with Conservancy and perform any acts or execute any documents reasonably necessary to enable Conservancy to secure such approvals and permits. District may be named as applicant or co-applicant or co-permittee as the Property owner and future management agency and shall review and approve such applications prior to submittal. Conservancy shall not commence construction of the Project unless and until all required Approvals for such construction have been obtained.
7. **Access to Property.** Contractor shall be authorized to access the Property, at reasonable times and upon reasonable prior notice to District through Conservancy, for the purpose of constructing the Project in accordance with the Construction Contract. Conservancy shall be authorized to access the Property, at reasonable times and upon reasonable prior notice to District, for the purpose of inspecting progress of the Project, managing and monitoring compliance with the Construction Contract, and conducting Conservancy's management and maintenance obligations under this Agreement.
8. **Indemnity.** Conservancy shall indemnify, hold harmless, and defend District, its officers, directors, agents and employees (each of which is an "indemnitee") from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including reasonable attorneys' fees and costs, arising out of or relating to Conservancy's performance of its obligations under this Agreement, and injury (including death) or

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damage to any person or property or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by Conservancy hereunder, including events occurring on or off the Property, regardless of how the injury or damage was caused or suffered, except to the extent such injury or damage results from the gross negligence or the intentional or willful misconduct of District, its officers, directors, agents, or employees. District shall have no responsibility to safeguard the equipment and property of Conservancy or any Contractor.

In the event a claim is made against District, or District is named a co-defendant in any action, arising out of, or in any way related to, activity conducted by Conservancy that is covered by Conservancy's indemnity obligations hereunder, Conservancy shall immediately notify District of such fact, and at District's option, shall either retain legal counsel to represent District in such action, at Conservancy's sole expense, or reimburse District for District's reasonable litigation costs, expenses and attorneys' fees in undertaking to represent itself.

9. **Hazardous Materials.**

- (a) **Hazardous Materials Defined.** Hazardous Materials shall mean any substance: (i) the presence of which requires or could require investigation, remediation, warning or disclosure under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes defined as a "hazardous waste," "extremely hazardous waste," "toxin," "hazardous substance," "pollutant" or "contaminant" under any federal, state or local statute, regulation, ordinance, rule, directive or order or any amendments thereto (hereinafter referred to as "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (41 U.S.C. Section 6901 et seq.); (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; (iv) which contains gasoline, diesel fuel or other petroleum hydrocarbons or constituents thereof; (v) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (vi) radon gas.
- (b) **Conservancy's Obligation.** Conservancy shall remediate and properly dispose of, at its sole cost and expense as provided below, all Hazardous Materials on, in, below or about the Property that Conservancy or any Contractor introduces onto the Property during the course of constructing, managing or maintaining the Project in accordance with this Agreement. Any remediation and removal of Hazardous Materials shall be done in strict compliance with applicable federal, state and local laws and regulations. Conservancy shall have the obligation to keep the District

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informed as to the status, nature, and extent of any Hazardous Materials encountered by Conservancy or any Contractor on the Property. District shall be included in all meetings with the appropriate regulatory agencies relating to Hazardous Materials and District shall be provided all costs estimates for work to be performed relating to Hazardous Materials removal.

- (c) **Conservancy's Cost Cap.** Conservancy's costs for remediation of Hazardous Materials under this Section 9, including any additional environmental investigation required by the regulatory agencies, shall not exceed Three Hundred Fifty Four Thousand Seven Hundred Fifty Dollars (\$354,750) ("Conservancy's Cost Cap"). If Conservancy, based upon written estimates from its environmental consultants, determines that remediation costs Conservancy is obligated to pay under Section 9(b) above may exceed Conservancy's Cost Cap then, prior to commencing any remediation work, District and Conservancy shall meet and confer regarding the proposed remediation. District may obtain the services of its own environmental consultants to review any proposed work plan, evaluate the costs, conduct its own investigation and work with the appropriate regulatory agencies.

- (d) **No Liability.** This Agreement shall not impose or create any liability for Conservancy, as an operator or generator or otherwise, for any Hazardous Materials existing on the Property as of the date of this Agreement, whether known or unknown, or introduced on the Property thereafter by District or any other party other than Conservancy or any Contractor.

10. **Notices.** All notices, requests, demands, consents, waivers and other communications required or desired to be given under any of the provisions of this Agreement shall be in writing and shall be (a) served in person, (b) sent by special courier (e.g., Federal Express), fully prepaid or billed to sender, or (c) mailed by U.S. registered or certified mail, fully postage prepaid, return receipt requested, addressed as follows:

If to District: East Bay Regional Park District
Attention: _____

Telephone: _____
Facsimile: _____

If to Conservancy: East Contra Costa County Habitat Conservancy
Attention: _____

Telephone: _____
Facsimile: _____

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or to such other address as the addressee may have specified in a written notice duly given to the sender in the manner above provided. Any notice, request, demand, consent, waiver or other communication given in accordance with the provisions of this section shall be presumed to have been given or received on the earlier to occur of (a) the date of actual receipt thereof, (b) the third business day following the date of mailing same by U.S. registered or certified mail, or (c) the third business day following delivery thereof to the special courier, as shown on the courier's records, as appropriate. The delivery to or receipt of copies of any such notice, request, demand, consent, waiver or other communication by any persons other than and in addition to District or Conservancy, is merely an accommodation and is not necessary or required to make effective the giving or receipt thereof by or to District or Conservancy.

- 11. **Modification to Agreement.** This Agreement may only be modified by a writing executed by both Parties.
- 12. **Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject matter of this Agreement. Any representation of promise of the Parties relating to the work shall not be enforceable unless it is contained in this Agreement.

In witness whereof, Conservancy and District have executed this Agreement, effective as of the date first above written.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
 Name: John Kopchik
 Title: Executive Director
 Date: _____, 2008

EAST BAY REGIONAL PARK DISTRICT

By: _____
 Name: Pat O'Brien
 Title: General Manager
 Date: _____, 2008

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EXHIBIT A
Map Identifying Location of Property and Project

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EXHIBIT B
Description of Project

Excavate earth to create pond approximately 1 acre in size; separate soils and use excavated clay to line bottom and sides of pond; construct berm and install geotextile pyramat and HDPE geomembrane; hydroseed pond and disturbed area.

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EXHIBIT C Construction Contract Provisions

1. **Prevailing Wages.** Contractor may select its own contractors and consultants to construct the Project. Contractor shall ensure that all contracts for construction of the Project provide for the payment of prevailing wages in accordance with California Labor Code section 1720 *et seq.* to the full extent required by law. Contractor shall defend, indemnify and hold harmless Conservancy and District, their officers, directors, agents and employees from any and all claims, demands, suits, fines, penalties, orders, administrative rulings or judgments relating to the payment or nonpayment of prevailing wages to any person performing work for Conservancy as called for under the Construction Contract.

2. **Required Security.**

(a) **Performance Security.** Prior to commencement of any work on the Project agreed to be done by any Contractor, Contractor will file with Conservancy a good and sufficient bond or guarantee security in an amount not less than one hundred percent (100%) of the estimated cost of the Project for the faithful performance of the terms and conditions and guarantees of the Construction Contract by a corporation authorized to transact business in the State of California in a form acceptable to Conservancy.

(b) **Labor and Materials Security.** Prior to commencement of construction of the Project, any Contractor will file with Conservancy a good and sufficient labor and materials bond or guarantee security in an amount not less than one hundred percent (100%) of the total estimated cost of the Project, securing payment to the Contractor, his subcontractors, and to persons renting equipment or furnishing labor or materials to them for the Project. Said bond or security shall be issued by a corporation authorized to do business in the State of California, and shall be in a form acceptable to Conservancy. The Labor and Materials Security may be released six months after completion and acceptance of the Project by the Conservancy and District, except that Conservancy shall retain 125% of the total claimed by any claimants who have filed a lien and provided notice thereof to Conservancy.

(c) **Requirements for All Security.** All security required under this Agreement shall be provided as a certified check, a bond in a form acceptable to Conservancy and District and issued by an admitted and authorized surety in California, or an irrevocable standby letter of credit in a form acceptable to Conservancy and District. Any additions, alterations or modifications to the Construction Contract and/or the plans and specifications for the Project, including any extension of time within which the work hereunder may be completed, shall not release or exonerate any surety or sureties given under the Construction Contract. The provisions of California Civil Code section 2819 are expressly waived. If the security contains an expiration date, such security shall also contain an automatic renewal provision providing Conservancy with not less than a thirty (30) days' written notice of any non-renewal. If Conservancy receives notice that the security is to terminate prior to the completion of the

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Project and Contractor fails to provide Conservancy with new security, such failure shall be considered a breach of the Construction Contract, entitling Conservancy to draw upon the current security.

3. **Insurance.** Each Contractor shall obtain and maintain at its own expense during the term of the Construction Contract, policies or policies of insurance of the type and amounts described below.

(a) **General Liability.** General Liability (Bodily Injury and Property Damage) including Premises and Operations (including off-site operations), Blanket Contractual Liability, Broad Form Property Damage, Products and Completed Operations, Personal Injury, and Owners and Contractors Protective/Liability in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

(b) **Workers' Compensation.** Workers' Compensation and Employer's Liability with limits of \$500,000 per occurrence as required by law and in full compliance with California Labor Code Section 3700.

(c) **Automobile Liability Insurance.** Commercial auto liability and property insurance covering all owned and rented vehicles of Contractor or its agents with a minimum amount of \$1,000,000 per occurrence combined single limit per accident for bodily injury and property damage.

(d) **Endorsements.** The above insurances policies shall be endorsed as follows:

- (i) The General Liability and Automobile Liability Insurance Policies shall name Conservancy and District, its officers, directors, agents and employees as additional insureds.
- (ii) The policies shall not terminate nor shall they be canceled nor the coverage reduced, until thirty (30) days written notice has been given Conservancy and District.
- (iii) The insurance shall be primary for Conservancy and District and any other insurance maintained by Conservancy or District shall be excess and not contributing.
- (iv) Waiver of all subrogation claims against Conservancy and District.

(d) **Licensed Insurer.** Each insurer shall be licensed to do business in the State of California, with a rating of A or better by Best's Key Rating Guide and shall be acceptable to Conservancy in Conservancy's sole opinion.

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(e) **Copy of Policy(ies).** Upon written request of Conservancy, each Insurer or his/her agent will furnish a copy of their respective policy(ies) to Conservancy, certified to be a true and complete copy of the original.

4. **Hazardous Materials.**

(a) **Hazardous Materials Defined.** Hazardous Materials shall mean any substance: (i) the presence of which requires or could require investigation, remediation, warning or disclosure under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; (ii) which is or becomes defined as a “hazardous waste,” “extremely hazardous waste,” “toxin,” “hazardous substance,” “pollutant” or “contaminant” under any federal, state or local statute, regulation, ordinance, rule, directive or order or any amendments thereto (hereinafter referred to as “Environmental Laws”), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (41 U.S.C. Section 6901 et seq.); (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; (iv) which contains gasoline, diesel fuel or other petroleum hydrocarbons or constituents thereof; (v) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (vi) radon gas.

(b) **Contractor’s Obligation.** Contractor shall remediate and properly dispose of, at its sole cost and expense as provided below, all Hazardous Materials on, in, below or about the Property that Contractor introduces onto the Property during the course of performing its obligations under the Construction Contract. Any remediation and removal of Hazardous Materials shall be done in strict compliance with applicable federal, state and local laws and regulations. Contractor shall have the obligation to keep Conservancy and District informed as to the status, nature, and extent of any Hazardous Materials encountered by Contractor on the Property. Conservancy and District shall be included in all meetings with the appropriate regulatory agencies relating to Hazardous Materials and Conservancy and District shall be provided all costs estimates for work to be performed relating to Hazardous Materials removal.

(c) **No Liability.** The Construction Contract shall not impose or create any liability for Contractor, as an operator or generator or otherwise, for any Hazardous Materials existing on the Property as of the date of the Construction Contract, whether known or unknown, or introduced on the Property thereafter by District or any other party other than Contractor.

5. **Indemnification.** Contractor hereby waives all claims and recourse against Conservancy and District, including the right to contribution for loss or damage by reason of death or injury to persons or damages to property, whether the person or property of Contractor, its agents or employees, or third persons arising from, growing out of or in any way connected

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with or incident to the Construction Contract or the work performed hereunder, except claims arising from the sole negligence of Conservancy or District, their officers, directors, agents, or employees. The provisions of this Section shall survive the termination or expiration of the Construction Contract. Contractor shall indemnify, hold harmless, and defend Conservancy and District, their officers, directors, agents and employees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including attorneys' fees, penalties, judgments or obligations whatsoever to attack, set aside, void or annul Conservancy's and District's approval(s) relating to this Construction Contract or in connection with injury (including death) or damage to any person or property or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by Contractor, including, but not limited to, Contractor's construction activities relating to the Project on the Property, including events occurring on or off the Property, regardless of how the injury or damage was caused or suffered, unless the injury or damage resulted from the sole negligence or the intentional and willful misconduct of Conservancy or District, their officers, directors, agents, or employees.

Neither Conservancy nor District shall have any responsibility to safeguard the equipment and property of Contractor. Neither Conservancy nor District shall have any responsibility to safeguard or protect Contractor, or its employees, agents, officers, directors, or any of its invitees from bodily injury including death or personal injury.

In the event a claim is made against Conservancy or District or Conservancy or District is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Contractor, Contractor shall immediately notify Conservancy and District of such fact, and at Conservancy's and District's option shall either retain legal counsel to represent such party in such action at Contractor's sole expense or reimburse Conservancy and District for Conservancy's and District's litigation costs, expenses and attorney's fees in undertaking to represent itself.

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EXHIBIT E
Management Plan Outline

**VASCO CAVES SOUZA I HCP POND PROJECT
RESOURCE MANAGEMENT PLAN OUTLINE**

August 22, 2008

Prepared for:

East Contra Costa County Habitat Conservancy
in partnership with the
East Bay Regional Park District
CCC Community Development Department
651 Pine Street, 4th Floor, North Wing
Martinez, California 94553

Attention: Mr. John Kopchik
Phone: (925) 335-1272

Prepared by:

Monk & Associates, Inc.
1136 Saranap Avenue, Suite Q
Walnut Creek, California 94595
Phone (925) 947-4867
Fax (925) 947-1165

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Figure 1. Regional Location Map.

Figure 2. Site Location Map.

1. INTRODUCTION

The East Contra Costa County Habitat Conservancy (Conservancy), in collaboration with the East Bay Regional Park District (EBRPD or District), is proposing to construct a one-acre seasonal pond within the Vasco Caves Regional Preserve (Regional Preserve or Preserve) that will create a wetland that is also suitable breeding habitat for the California tiger salamander (*Ambystoma californiense*), a federal listed threatened species. Monk & Associates, Inc. (M&A) has prepared this Resource Management Plan for the one-acre pond site. In this plan we present the objectives for creation of the pond, the tasks and management requirements for the pond, and finally the required monitoring tasks that should be completed as part of the long term objectives for the pond creation project.

The project was proposed as an element of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP or Plan), a document and method intended to provide regional conservation and development guidelines to protect natural resources while improving and streamlining the permit process for endangered species and wetland regulations. A critical component to the HCP/NCCP is the utilization of the Conservation Strategy, which provides for the creation of a preserve system that will protect land for the benefit of covered species, natural communities, biological diversity, and ecosystem function and mitigate for habitat loss by restoring or creating specific habitats and land cover types.

It should be noted that there is a Vasco Caves Regional Preserve Management Plan prepared by EBRPD for the entire Vasco Caves Regional Preserve. This plan documents past and ongoing land management activities, the permitted and prohibited uses of the property, and a prescription of preserve enhancements and management actions that will be used to fulfill the preserve and preserve-wide ecological goals and objectives. The pond creation project covers a relatively small area within Vasco Caves Regional Preserve. This plan is not meant to supersede or in anyway interfere with the management prescriptions provided in that Management Plan.

2. LOCATION

The project site is located within the 775-acre Vasco Caves Regional Preserve located approximately 4 miles southwest of Byron, California, and about one mile north of the Alameda/Contra Costa county border (Figures 1 and 2). The easternmost hills of the Diablo Range converge with the Central Valley and the San Joaquin River Delta a few miles to the east of the site. The triangular shaped parkland is surrounded by Contra Costa Water District lands. Los Vaqueros watershed occurs to the northwest of the Preserve. Howden Wind Farm turbines occur northeast of the Preserve, and privately owned rangeland occurs to the south. Access to the site is by unpaved road on the east side of the preserve off of Vasco Road, which is the main north-south connector road for eastern Contra Costa County.

2.1 Goals and Objectives

The project site is within a region and vicinity known to support the California red-legged frog (*Rana aurora draytonii*), a federally listed threatened species; the California tiger salamander, a federal listed threatened species (in the region of the project site); the western burrowing owl, a California “species of special concern,” and the San Joaquin kit fox (*Vulpes macrotis mutica*), a federal listed endangered species and a state listed threatened species. Therefore, the pond creation

project is in a region where restoration of such habitat could have meaningful benefits to special-status wildlife species.

Wetland restoration is a major factor in the Conservation Strategy that is outlined in the HCP/NCCP. Restoration and creation of wetlands in the HCP/NCCP inventory area will augment and enhance the functions of natural communities lost to development (“covered activities”) in east Contra Costa County.

The objectives of the Vasco Caves Souza 1 HCP wetland project include:

- To increase the extent of wetlands in a degraded section of the Vasco Caves preserve;
- To increase the abundance and distribution of native hydrophytic wetland plant species in the Vasco Caves Regional Preserve; and
- To develop a template for successful initiation of HCP/NCCP wetland restoration projects through a District and Conservancy partnership.

3. RESPONSIBLE ENTITIES

Site Manager and Property Owner:

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, California 94605-0381

Partner:

East Contra Costa Habitat Conservancy
651 Pine Street, 4th Floor NW
Martinez, California 94553

4. SITE CONDITIONS

4.1 Regional Setting

The Vasco Caves Regional Preserve is located in the southeastern corner of the HCP/NCCP inventory area, off of rural Vasco Road, near the Contra Costa/Alameda County border (Figure 1 and 2). The entire preserve is noted for the presence of special-status plants and animals that also constitute covered species in the HCP. Precipitation in the area falls as rain, averaging approximately 15.75 inches per year (provided by Contra Costa County). Wind energy turbines are prevalent in the area dominating many ridges near this Regional Preserve.

4.2 Historical Context

The Vasco Caves Regional Preserve was created by EBRPD with two major land acquisitions from the previous owners Walker and Souza. Grazing has played a major role for over one hundred years on what is now the preserve, and on the surrounding private lands. With the absence of boundary fencing, overall livestock use within what is now the Regional Preserve exceeded acceptable range management standards, providing cattle with unrestricted, year-round access to the preserve from

adjacent private land. Since boundary fencing was installed in 1999, grazing on the site is now controlled.¹

4.3 Current Site Conditions

The project site where the pond will be created is dominated by non-native annual grassland. There are no waters of the U.S. or State that would be impacted by the proposed pond creation project. The restoration project is located along a lowland swale about 400 feet west of an existing pond. The entire restoration area is 2.62 acres. The pond that would be constructed will be approximately one acre.

4.3.1 SOILS

The primary soil type present in the delineated area is the Pescadero clay loam, which is considered hydric in depressions, but was not deemed hydric within the delineated area. Pescadero clay loam can also contain high alkali content, and in those cases is mapped as Pescadero clay loam, strongly alkali. Soil analysis showed a second sandy clay layer approximately 2 to 3 feet below the surface layer of Pescadero Clay Loam. This lower layer is porous and would be unlikely to support wetlands.

4.3.2 VEGETATION

The only land cover type supported by the pond creation is annual grassland. For the purposes of HCP/NCCP implementation, annual grassland is defined as a natural community where grasses and forbs (in this case, non-native) dominate the landscape, and trees and shrubs comprise less than 5% canopy cover (ECCHCP/NCCP, 3-8)².

Annual grassland in the Regional Preserve is dominated by non-native species, composing up to 90% of the cover. Using Department of Fish and Game (2000)³ and California Native Plant Society (2001)⁴ botanical survey protocols, the grassland area was surveyed for rare plants on January 15, February 26, March 7, April 29, and July 16, 2008 by biologists Ms. Sarah Lynch, Ms. Hope Kingma, Ms. Melisa Anderson, and/or Mr. Geoff Monk. No special-status plants were identified during these surveys. Table 1 indicates the total percent cover found at the pond by native vs. non-native species as observed in July 2008.

¹ EBRPD 2001. Vasco Caves Resource Management Plan. Adopted March 21, 2000.

² Jones & Stokes. 2006. East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan. October 2006.

³ California Department of Fish and Game. 2000. Guidelines for assessing the effects of proposed developments on rare and endangered plants and plant communities. May 4, 1984; revised May 8, 2000. 2 pps.

⁴ CNPS (California Native Plant Society). 2001. Inventory of rare and endangered plants of California (sixth edition). Rare plant scientific advisory committee, David P. Tibor, convening editor. California Native Plant Society. Sacramento, CA. 338 pps.

Table 1. Plant Cover on Project site

| Species | Native/non-native | Percent cover |
|---|-------------------|---------------|
| Soft chess (<i>Bromus hordeaceus</i>) | Non-native | 90% |
| Shining peppergrass (<i>Lepidium nitidum nitidum</i>) | Native | 9% |
| Turkey mullein (<i>Croton setigerus</i>) | Native | 1% |

4.3.3 WATER SOURCES AND QUALITY

The site is mostly flat with modest terrain slope. The majority of the project site appears to drain towards to the west. Field wetland hydrology indicators were absent during the site inspection (e.g. inundated areas and areas that exhibited saturated soil conditions at the surface or in the soil profile within 12 inches of the surface) indicating there is no ground water that will support the pond creation project. Rather, the created pond will receive water from direct precipitation and surface sheet flows from the surrounding uphill landscape which is sloped towards the proposed pond basin.

4.3.4 WILDLIFE

The Vasco Caves parcel has been designated suitable core habitat for the San Joaquin kit fox and is modeled as potential aestivation habitat for the California tiger salamander (ECC HCP/NCCP 2006). A pond 400 feet east of the restoration area (Figure 2) also provides breeding habitat. There is also potential breeding habitat for California red-legged frog within the off-site pond, and the entire Vasco Caves Regional Preserve provides potential migration and aestivation habitat (ECC HCP/NCCP 2006).

Monk & Associates wildlife biologists conducted required planning surveys for special status species in accordance to the HCP/NCCP. The surveys and results are presented as follows: The CNDDDB identified four special-status wildlife species that M&A determined could be found in the immediate vicinity of the project site. These species are discussed below.

4.3.4.1 California Red-Legged Frog (*Rana aurora draytonii*)

The California red-legged frog (CRLF) was federally listed as threatened on May 23, 1996 (Federal Register 61: 25813-25833). Critical habitat for this species was designated on March 13, 2001 (Federal Register 66: 14625-14674), however on November 6, 2002 a court decision removed many of the critical habitat units that had been designated for the frog on March 13, 2001. On April 13, 2004 the USFWS re-proposed critical habitat for CRLF. Due to budget and time constraints, the re-proposal is very similar to the March 2001 critical habitat designation for CRLF. The USFWS is expected to adopt a final revised rule by November 2005. The project site is not located within the March 2001 critical habitat designation for California red-legged frog. This frog is also a California “species of special concern.” California “species of special concern” are species in which their California breeding populations are seriously declining and extirpation from all or a portion of their range is possible (Remsen 1978)⁵.

⁵ Remsen, J.J., Jr. 1978. Bird species of special concern in California: An annotated list of declining or vulnerable bird species. California Department of Fish and Game, Wildlife Management Division. . Administrative Report, 78-1. Sacramento, CA, 54 pp.

The California red-legged frog is typically found in slow-flowing portions of perennial streams and in ephemeral streams, and hillside seeps that maintain pool environments or saturated soils throughout the summer months. Riparian vegetation such as willows (*Salix* sp.) and emergent vegetation such as cattails (*Typha* sp.) are preferred red-legged frog habitats, though not necessary for this species to be present. This frog is also found in ponds. Populations of California red-legged frog will be reduced in size or eliminated from ponds supporting non-native species such as bullfrogs (*Rana catesbeiana*), Centrarchid fish species (such as sunfish, blue gill, or large mouth bass), and signal and red swamp crayfish (*Pacifastacus leniusculus* and *Procambarus clarkii*, respectively), all known California red-legged frog predators.

This project site is located approximately 400 feet west of a large pond that has been known support California red-legged frog in the past (pers. comm. between G. Monk and Joe DiDonato). The pond dried in about early June 2008 which would present conditions unsuitable for this frog. Regardless, this pond has not been known to support the California red-legged frog for several years. Accordingly, *the California red-legged frog is not expected to occur within the project area since they require perennial water to survive during the dry summer months. No further actions with respect to this frog are warranted for the proposed project.*

4.3.4.2 California Tiger Salamander (*Ambystoma californiense*)

The California tiger salamander occurs in grasslands and open oak woodland that provide suitable aestivation (i.e., summer retreats) and/or breeding habitats. On July 27, 2004 the USFWS determined that they would list the Central California Distinct Population Segment (DPS) of the California tiger salamander as threatened. The USFWS also designated *Critical Habitat* for this salamander in the summer of 2004. The pond creation project site is located within *Critical Habitat Unit 17* designated in Contra Costa County (Federal Register, Vol. 69, No 153, August 10, 2004).

In addition to being federally listed, CTS are also a California “species of special concern.” This title affords the CTS no legally mandated protection; however, pursuant to CEQA (14 CCR §15380), this species must be considered in any project that will undergo, or is currently undergoing CEQA review, and/or any project that must obtain an environmental permit(s) from a public agency (e.g., the Corps). The CTS is also protected under Title 14 of the California Code of Regulations (CCR). Under Title 14, CCR 41 (1996), CTS is a protected amphibian that may only be taken or possessed under a special permit issued by the California Department of Fish and Game (CDFG) pursuant to sections 650 and 670.7 of these regulations, or Section 2081 of the Fish and Game Code

CTS occur in grasslands and open oak woodland that provide suitable aestivation (i.e., summer retreats) and/or breeding habitats. California tiger salamander spend the majority of their lives underground in California ground squirrel (*Spermophilus beechyi*) burrows, Botta’s pocket gopher (*Thomomys bottae*) burrows, and other subterranean refugia. This salamander has also been found in areas with no apparent underground retreats. In these areas it may utilize cracks in the ground or may burrow into loose soil, or seek refuge in and under rotting logs or fallen branches. The CTS emerges from its aestivation sites for only a few nights each year during the rainy season to migrate to its breeding ponds. Seasonal wetlands, vernal pools, or artificial impoundments such as stock

ponds that typically do not support fish, bullfrogs (*Rana catesbeiana*), red swamp crayfish (*Procambarus clarkii*), or signal crayfish (*Pacifastacus leniusculus*) provide suitable breeding habitat. Breeding ponds and streams typically hold water at least until the month of May to allow time for larvae to fully metamorphose. California tiger salamander may migrate up to 0.62-mile or more from its underground retreats to breeding ponds⁶, unobstructed migration corridors are critical to this animal's survival.

CTS are known to breed in the existing pond located approximately 400 feet west of the project site. While this pond has been dry since June 2008, and thus CTS will not be in the pond until it rehydrates next winter, this salamander can be expected to occur in the uplands surrounding the existing pond including those uplands that would be impacted by the proposed pond project. A certain extent of take from the pond creation project is considered likely, however, this take should be balanced against the fact that the creation of the pond by itself is self-mitigating since it will create additional CTS breeding habitat.

In order prevent avoidable harm to the CTS, in the event pond construction is not completed by October 1st, a silt fence will be installed around the pond. In this fashion, if the pond partially fills, it creates an attractive breeding nuisance or a "breeding sink" that would prematurely dry before CTS larvae metamorphose in the spring. The installed silt fence would be maintained until the pond creation project is complete. Upon completion, the pond is expected to provide suitable breeding habitat for the CTS.

4.3.4.3 Western Burrowing Owl (*Athene cunicularia hypugaea*)

The western burrowing owl is a California "species of special concern." Its nest, eggs, and young are also protected under California Fish and Game Code (§3503, §3503.5, and §3800). The burrowing owl is also protected from direct take under the Migratory Bird Treaty Act (50 CFR 10.13). Finally, based upon this species' rarity status, any unmitigated impacts to rare species would be considered a "significant effect on the environment" pursuant to §21068 of the CEQA Statutes and §15382 of the CEQA Guidelines. The western burrowing owl is known to occur in the immediate vicinity of the pond creation site.

Burrowing owl habitat is usually found in annual and perennial grasslands, characterized by low-growing vegetation. Often, the burrowing owl utilizes rodent burrows, typically ground squirrel burrows, for nesting and cover. They may also on occasion dig their own burrows, or use man-made objects such as concrete culverts or rip-rap piles for cover. They exhibit high site fidelity, reusing burrows year after year. Occupancy of suitable burrowing owl habitat can be verified at a site by observation of these owls during the spring and summer months or, alternatively, its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement (white wash) at or near a burrow. Burrowing owls typically do not use grasslands with tall vegetation or wooded areas because the vegetation obscures their ability to detect avian and terrestrial predators. Since burrowing owls spend the majority of their time sitting at the entrances of their burrows, grazed

⁶ Brode, J. M. 1997. Survey Protocol for California Tiger Salamander (*Ambystoma californiense*). California Department of Fish and Game, Sacramento, California. Inland Fisheries - Informational Leaflet No. 44. September 1997. 7 pps.

grasslands seem to be their preferred habitat because it allows them to view their surroundings at 360 degrees without obstructions.

In order to avoid potential impacts to burrowing owls, preconstruction survey was conducted pursuant to the methodology prescribed in CDFG's *Staff Report on Burrowing Owl Mitigation* (CDFG 1995). Surveys were conducted on January 15, February 26, March 7, April 29, and July 16, 2008 by biologists Ms. Sarah Lynch, or Ms. Hope Kingma, Ms. Melisa Anderson and Mr. Geoff Monk. No western burrowing owls have been observed on within a zone of influence around the pond excavation project site.

A second preconstruction survey for western burrowing owl will be conducted in the 7 day period prior to initiation of any ground disturbance for the pond creation project. An M&A biologist will survey the proposed pond footprint and a 500-foot radius from the proposed limits of disturbance to identify burrows and owls. If occupied burrows are found during planning surveys, the status of this burrow will be documented according to the HCP guidelines (Chapter 6, page 40). If no owls are found, no further regard for their safety would be warranted. If they are identified within a zone of influence, the Conservancy will be notified and a non-disturbance buffer will be established until the Conservancy determines that the owls can be passively relocated from harms way.

4.3.4.4 San Joaquin Kit Fox (*Vulpes macrotis mutica*)

The San Joaquin kit fox is a federal listed endangered species and is listed by the State of California as threatened. It is the smallest fox species in North America typically weighing between 4 and 6 pounds. The San Joaquin kit fox (kit fox) has large ears, long legs, and is generally a buffy tan color with a black-tipped tail. Kit fox live primarily in the lowlands of the San Joaquin Valley of California, but are also known to occur in several counties in the coast mountain ranges including Santa Barbara, San Luis Obispo, Monterey, San Benito, Santa Clara, Contra Costa and Alameda Counties. The pipeline repair sites are located within the mapped range of this species. This fox species is usually found in open grassland and shrubland communities, but has also been observed in orchards that border grassland or shrubland plant communities.

Kit fox are carnivorous, usually feeding on small rodents such as San Joaquin pocket mice (*Perognathus inornatus*), deer mice (*Peromyscus maniculatus*), western harvest mice (*Reithrodontomys megalotis*), kangaroo rats (*Dipodomys* spp.) and larger rodents such California ground squirrel (*Spermophilus beecheyi*). Kit fox also prey upon lagomorphs such as black-tailed hare (*Lepus californicus*) and desert cottontail (*Sylvilagus auduboni*).

This fox species relies on subterranean dens for breeding and escape cover from potential predators. Natal and pupping dens consist occur in areas with solitary or multiple den openings. Both adults care for pups until they are about four to five months old at which time family bond begin to dissolve. Dens are excavated in loose-textured soils, generally in areas with low to moderate relief. Kit fox will also utilize existing burrows excavated by rabbits, ground squirrels, badgers (*Taxidea taxus*), and on occasion will use man-made structures for denning such as well casings, culverts, and abandoned pipelines. Typically, dens are small enough to discourage easy predation by coyotes (*Canis latrans*) and red fox (*Vulpes vulpes*).

M&A conducted a den survey and identified a single “potential den” that could be used the San Joaquin kit fox immediately to the north of the pond creation site. The term potential den only means that a burrow opening was consistent with the size of burrows used by the San Joaquin kit fox. In most cases, in Northern California, potential dens are not used by the San Joaquin kit fox owing to the scarcity of this fox. Typically, most potential dens are enlarged California ground squirrel burrow openings, while a few others turn out to be in use by other fox species, such as the red fox (*Vulpes vulpes*).

In order to prevent impacts to the San Joaquin kit fox, in the week prior to construction, infrared camera stations will be set up and maintained for 3 consecutive nights at the potential den site to determine if it is in use by the San Joaquin kit fox. If it is found to be in use, exclusion zones for potential and known dens would also be established according to HCP/NCCP guidelines with proper notification to the USFWS per the HCP (Chapter 6; page 38). Owing to the time of year and characteristics of the burrow, M&A do not believe that the potential den is a natal den which could require other measures for protection of young.

5. RESTORATION

The approach for the Vasco Caves restoration project is to capture water along a swale into a pond, with minor grading and bed contouring. The installation of local wetland plant species should increase plant diversity, and the establishment of a native grassland area on the disturbed upland areas of the created wetland.

5.1 Definition

According to the HCP/NCCP, habitat restoration is defined as the establishment of a vegetation community in an area that historically supported it, but no longer does because of the loss of one or more required ecological factors. On the Vasco Caves preserve, long-term grazing and invasive species encroachment has impacted the ecological and hydrologic function of the wetland and annual grassland communities.

5.2 Schedule

50% and 100% grading plan for the pond creation project, and technical specifications, have been reviewed and approved by the East Bay Regional Park District. The Conservancy approved funding for the project on xx.

- Bidding - August 20 through August 25, 2008.
- Pre bid meeting - August 18, 2008
- Permits - None required.
- Construction - September 9, 2008
- Short-term monitoring Winter 2008 through Winter 2013.
- Long-term monitoring After project meets success criteria, but not before 2013.

5.3 Proposed Pond

The pond site will be cleared, graded, and recontoured to meet the pond grading plan. The pond spillway will be protected with a geotextile channel liner (i.e., Pyramat®) to prohibit unanticipated scour. In addition, a high density polyethylene (HDPE) sheet (80 mil) will be installed vertically within the berm to counter damage by burrowing rodents and to otherwise ensure the berm remains sound. The bottom contours of the pond will be seeded with a native hydroseed mixture that includes native plants such as creeping spikerush (*Eleocharis macrostachya*), Vasey's coyote-thistle (*Eryngium vaseyi*), flat-face downingia (*Downingia pulchella*), and toad rush (*Juncus bufonius*).

5.4 Native grassland

Broadcast seeding with native seed mix and hydromulching will occur in all disturbed upland areas of the project site. Native seeds from purple needle grass (*Nasella pulchra*), creeping wildrye (*Leymus triticoides* – Rio or White Lake), meadow barley (*Hordeum brachyantherum californicum*), valley gumplant (*Grindelia camporum*), and blue wildrye (*Elymus glaucus* - Anderson variety) will be used for restoration of disturbed upland areas.

6. MANAGEMENT AND MAINTENANCE

6.1 Grazing

Cattle can be used as a management tool to reduce wildfire fuel loads, maintain or improve grassland habitat species diversity, and maintain or improve potential habitat for California tiger salamander, burrowing owls, and native plants on site. The assumption that biological diversity and ecological integrity can be optimized in California's grasslands by removing livestock grazing is based on the false notion that livestock grazing necessarily leads to natural resource degradation and that removal or reduction of grazing results in resource enhancement and restoration. This belief is largely inconsistent with research showing that exclusion of grazing in mesic areas of California can lead to increases in exotic species at the expense of natives. Several sites within the San Francisco Bay Area also demonstrate that grazing is an important element of grassland ecosystems that support sensitive plant and animal species.

Livestock will likely look to the created pond for future water supply. That being said, the pond edges and berm can be trampled/damaged if livestock use the pond when soils are wet or otherwise soft such as during the rainy season and early spring. Cattle trampling can cause soil compaction and destroy newly established seedlings. Thus, the pond should be fenced off to control grazing intensity and related disturbances during the winter and spring months, or from October 1st through June 1st, the pond should not be accessible to livestock.

During dry years, when potential for desiccation in the pond occurs earlier than May 1st, the pond should not be grazed until the California tiger salamander larvae have successfully metamorphosed and have left the pond. This can be expected to occur no later than June 15th.

The management of grazing animals at the pond should be the responsibility of EBRPD who will have the overall responsibility of managing grazing in the greater Vasco Caves Regional Preserve. The one-acre pond site does not constitute a management unit that should be treated significantly differently than any pond on the park system. Access to the created pond for grazing water will not be critical for managing cattle distribution within the Preserve owing to the fact that a pond now

occurs approximately 400 feet away from the created pond and is fully accessible to cattle/grazing animals. Thus, any level of non-grazing can be achieved without regard for grazing animal access to water.

6.2 Fencing

No permanent fencing is proposed around the one acre pond site. Rather it is proposed that if the rancher/EBRPD wishes to graze the pond after it is constructed, that cattle access to the pond be controlled via the temporary establishment of electric fences that are installed and operated while soils remain soft at the pond site. In this fashion, damage to the pond can be minimized.

6.3 Native Plant Species

The pond should support several California native plant species. It is being seeded with creeping spikerush (*Eleocharis macrostachya*), Vasey's coyote-thistle (*Eryngium vaseyi*), flat-face downingia (*Downingia pulchella*), and toad rush (*Juncus bufonius*). These species and other California native species will likely colonize the pond and continue to persist in the created pond for many years.

6.4 Pest Control

Grading in the pond creation area could result in the spread of non-native exotic plant species, specifically milk thistle (*Silybum marianum*). Infestations of invasive and noxious plants can adversely affect habitat values and covered species. Occurrences of such species will be controlled by some combination of manual removal, short-term grazing, or spot herbicide (only if alternative management methods are not likely to be effective or practicable). All herbicides to be implemented will be labeled by the U.S. Environmental Protection Agency for use in or near aquatic environments. Herbicide application methods will be limited to the most target specific approaches practicable. Control of pests should be in accordance with the District's pest management policies and practices. Note that herbicides are not proposed for coverage in the Section 10(a)(1)(B) permit for the HCP/NCCP.

California ground squirrels occur in the vicinity of the pond and are expected to continue to persist after the pond is created. These rodents are regarded as beneficial to special-status wildlife species such as the California tiger salamander, California red-legged frog, and the western burrowing owl. The berm of the pond has been constructed with a HDPE vertical liner to ensure that the pond remains compatible with rodent burrowing in the area.

6.5 Routine Pond Maintenance

Maintenance activities that will occur within the Regional Preserve are independent of the pond creation site. In general, no maintenance is expected to be required for the pond creation site outside of grazing management issues discussed in fencing above.

7. BIOLOGICAL MONITORING

Monitoring and adaptive management are essential components of restoration and habitat management. Monitoring for the pond creation project will be annually for five years.

7.1 Hydrological Monitoring

Inflows from precipitation will be estimated from rainfall data recorded at Brentwood weather station, Contra Costa County. During each site visit quantitative and qualitative data will be collected on the hydrological characteristics at the created pond. Water depth (inches) will be measured from two permanent staff gauges installed in the pond. The hydrological condition of the pond will be classified according to the following criteria:

Dry – Standing water is not present on the surface within the pool and water is not present within subsurface soils (4-6 inches deep).

Saturated – Standing water is not present on the surface within the pool. Water is present in surface and subsurface soils.

Inundated – Standing water is present on the surface within the pool.

Pond depths will be averaged over each month of inundation. The five year final monitoring report will average monthly depth data to derive average depths of inundation. These data will be evaluated with respect to necessary hydrology for supporting both hydrophytic plant species and CTS.

7.2 Vegetation Monitoring

Vegetation monitoring in the created pond will be conducted annually during the blooming period of key hydrophytic (wetland) species. In most years, this is expected to be April–May, but the actual timing may be adjusted slightly to coincide with optimal blooming conditions. All plant species observed in the mitigation pond will be recorded in order to determine the species composition and to identify undesired invasive pest plants. A systematic point-intercept sampling method will be employed to determine the frequency of plant species in each mitigation pool. Two 50-foot transects will be laid out via installation of permanent rebar markers. One will be installed along the shoreline; the other through the middle of the pond. Point counts will be made along each transect at 6-inch intervals, resulting in a total of 100 data points per transect. The frequency of each plant species observed in the pond will be calculated as follows:

$$\% \text{ plant 'X' in pool Y} = \frac{\text{number of plant 'X' counted along transect 1 and 2}}{200 \text{ total observations along transect 1 and 2}} * 100$$

Habitat affinities (i.e. obligate, facultative wetland species) of all plants counted and identified during transect sampling will be determined following the classification of Reed (1997)⁷. Habitat affinities include the following categories:

Obligate wetland plants (OBL) – Plants occur over 99% of the time in wetlands.

⁷ Reed, P.B., Jr. 1997. Revision of the National List of Plant Species That Occur in Wetlands, United States Fish and Wildlife Service, Washington, D.C.

Facultative wetland plants (FACW) - Plants occur 67 to 99% of the time in wetlands.

Facultative plants (FAC) - Plants occur 67 to 33% of the time in wetlands.

Facultative upland plants (FACU) - Plants occur 33% to 1% of the time in wetlands.

Upland plants (UPL) - Plants occur less than 1% of the time in wetlands.

Non-indicator plants (NI) – No classification given due to lack of information.

Wetland indicator species are those plant species that can tolerate prolonged inundation or soil saturation during the growing season. Wetland indicator species include those classified as OBL, FACW and FAC.

8. SUCCESS CRITERIA

Performance and success of the created pond will be assessed by the Conservancy over a 5-Year monitoring period. These criteria are as follows.

8.1 YEAR 1

- A portion of the pond will remain inundated for at least 30 days each year. The remainder of pond shall remain saturated for at least 60 days each year.
- Pond will have at least three wetland plant species established.
- Pond will not have plant species on the California Exotic Pest Plant Council's List A-1: *Most Invasive and Damaging Wildland Pest Plants* (Appendix A).

8.2 YEAR 3

- A portion of the pond will remain inundated for at least 30 days each year. The remainder of the pond shall remain saturated for at least 60 days each year.
- The pond will have a relative percent cover of vegetation of at least 50 percent 30 to 60 days after they dry in the spring, except in areas that remain inundated for periods of 30 days or longer. If vegetation grows in such areas, it will be dominated by hydrophytic plant species.
- The pond will not have plant species on the California Exotic Pest Plant Council's List A-1: *Most Invasive and Damaging Wildland Pest Plants* (Appendix A).

8.3 YEAR 5

- A portion of the pond will remain inundated for at least 30 days each year. The remainder of the pond shall remain saturated for at least 60 days each year.
- The pond edges and margin will be dominated by wetland vegetation (FAC, FACW and/or OBL species). An allowance will be made for vegetation suppression in inundated areas of the pond

owing to the desired design parameter for establishing a sufficiently long inundation period that will allow CTS larvae to successfully metamorphose.

- The pond will not have plant species on the California Exotic Pest Plant Council's List A-1: *Most Invasive and Damaging Wildland Pest Plants* (Appendix A).

If the above success criteria are met by the pond, it will be deemed successful. No remedial actions shall be warranted (see following section). Long-term maintenance and monitoring shall then become the responsibility of EBRPD.

9. REMEDIAL ACTIONS REQUIRED FOR POND FAILURE

It is acknowledged that the pond creation project is experimental. The watershed for the created pond is approximately 15 acres, which is relatively small. It is this watershed and direct precipitation that will hydrate the pond. In addition, the site lies in the rain-shadow of Mount Diablo, and thus hydrographs prepared for other communities in East Contra Costa County likely have little relevance to the rainfall curves at the pond creation site. That being said, there are ponds and seasonal wetlands known from this part of eastern Contra Costa County that suggest that a pond project will work at the proposed location. That being said, in meeting between the Conservancy, EBRPD, and M&A it was determined that there should be a course of action if the pond does not function per plans. In this section we acknowledge the experimental nature of the pond project and we prescribe remedial measures in the event the pond project is considered a failure.

In the event the pond does not exhibit targeted hydrology in Section 8 of this Plan in normal rainfall years, a meeting shall be convened between EBRPD and the Conservancy and a best course of action shall be determined. The course of action may consist of measures that could be taken to improve pond hydrology performance, or may include removing the pond entirely and restoring original contours. Any such restoration work would also include hydroseeding all disturbed areas with a native California seed mix consistent with Section 5.4 of this Plan. The cost of remedial work shall be borne exclusively by the Conservancy.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: August 25, 2008
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Local Assistance Grant 2008 from California Department of Fish and Game

RECOMMENDATION

Consider approving Resolution 2008-02 authorizing application for and acceptance of grant funds from the California Department of Fish and Game for wetland restoration activities.

DISCUSSION

Conservancy staff submitted a concept proposal for \$150,000 from the California Department of Fish and Game’s Local Assistance Grant funds to support planning, design and, potentially, construction of a wetland/riparian restoration project on the Souza II property on Armstrong Road near the Byron Airport (the property being acquired by East Bay Regional Park District with partial funding from the Conservancy). The Conservancy was invited to submit a full proposal, and as part of the package needs to submit a Board Resolution authorizing the application and acceptance (if awarded) of the grant funds.

The East Contra Costa County HCP/NCCP sets very ambitious goals for the restoration and creation of these wetland habitats: 433 acres of wetlands or riparian habitats and 5.8 miles of stream channels. Of this total, wetland and riparian restoration or creation is needed on 63 acres to contribute to recovery of species. Wetland restoration is subject to Stay Ahead Provisions of the Plan. Significant progress on this Plan component, including the contribution to recovery portion, must be completed by Year 2 of the NCCP when Stay Ahead reporting commences. We believe the wetland restoration requirements of the Plan are among its most ambitious features and that implementation of wetland restoration is among the most urgent tasks in the first years of Implementation. The Local Assistance Grant funds will provide critical support for the initial activities related to the wetland restoration and creation.

The Department of Fish and Game requires an authorizing resolution from the Conservancy’s Governing Board before they will enter into a grant agreement to initiate funding of the project.

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| CONTINUED ON ATTACHMENT: _____ YES | |
| ACTION OF BOARD ON _____ APPROVED AS RECOMMENDED _____ | |
| OTHER _____ | |
| <u>VOTE OF BOARD MEMBERS</u> | |
| _____ UNANIMOUS | I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN. ATTESTED _____ <i>DENNIS M. BARRY, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY |
| AYES: _____ NOES: _____ | |
| ABSENT: _____ ABSTAIN: _____ | |
| | |

Resolution No: 2008-02

RESOLUTION OF THE EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY AUTHORIZING THE APPLICATION AND ACCEPTANCE OF
GRANT FUNDS FOR WETLAND RESTORATION AND CREATION IN EAST CONTRA
COSTA COUNTY

WHEREAS, certain local assistance grant funds are made available annually on a competitive basis by the California Department of Fish and Game for Natural Community Conservation Planning (NCCP) Program urgent implementation tasks; and

WHEREAS, the grants are awarded pursuant to guidelines established by the California Department of Fish and Game for determination of project eligibility for funds; and

WHEREAS, said procedures established by the California Department of Fish and Game require the Grantee to certify by resolution the approval to apply for, and accept grant funds and provide authorization to enter into an agreement with the California Department of Fish and Game to implement urgent activities related to the NCCP Program.

NOW, THEREFORE, BE IT RESOLVED that the East Contra Costa County Habitat Conservancy approves the filing of an application for local assistance for the above project in the amount of \$150,000.

IT IS FURTHER RESOLVED that the East Contra Costa County Habitat Conservancy appoints the Executive Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved by the following vote on August 25, 2008.

Ayes:

Noes:

Abstain:

Attest: _____
John Kopchik, Executive Director