

**HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT  
SERVICE PROVIDER AGREEMENT WITH  
GHD Inc.  
FOR HABITAT RESTORATION PRIORITIZATON AND DESING SERVICES**

This Agreement is effective March 12, 2021 between the Humboldt Bay Harbor, Recreation and Conservation District, a Special District of the State of California (referred to as "District"), and GHD Inc. (referred to as "Service Provider").

1. Scope of Services: Service Provider agrees to perform services as set out in Exhibit A, "Scope of Work and Compensation" attached hereto and incorporated herein ("Services"), described briefly as habitat restoration prioritization and design. No purchase orders for this work will be issued without a valid Agreement.
2. Standards of Performance:
  - A. *Standard of Care*. The standard of care for all professional services performed or furnished by Service Provider under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
  - B. *Accuracy of Services*. District shall not be responsible for discovering deficiencies in the technical accuracy of Service Provider's Services. Service Provider shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in District-furnished information.
3. Compensation for Services, Payment:
  - A. *Compensation*. District shall pay Service Provider as set forth in Exhibit A, not to exceed \$27,000.
  - B. *Preparation and Submittal of Invoices*. Service Provider shall prepare and submit its invoices to District no more than once per month and no later than the 15th day of each month.
  - C. *Payments*. All reasonable efforts will be made by District to pay undisputed invoices within 30 days of receipt. If District contests an invoice, District may withhold that portion so contested and pay the undisputed portion.
  - D. *Withholding Of Payment*. The District may withhold all or any portion of the funds provided for by this Agreement in the event that the Service Provider has materially violated, or threatens to materially violate, any term, provision, or condition of this Agreement; or the Service Provider fails to maintain reasonable progress toward completion of the Services or any component thereof.
4. Commencement, Completion:
  - A. *Commencement*. Services of Service Provider shall commence upon full execution of this Agreement by all parties, and the Agreement shall remain in full force until one year after the date of agreement execution. No work, services, material or equipment shall be performed or furnished under this Agreement until the District has delivered a fully executed Agreement to the Service Provider. A signed Agreement is considered notice to proceed.
  - B. *Time for Completion*. Service Provider shall complete Services as set forth in Exhibit A. If District

authorizes changes in the scope, extent, or character of the Services, then the time for completion of Service Provider's services, and the rates and amounts of Service Provider's compensation, shall be adjusted equitably. If Service Provider fails, through its own fault, to complete the performance required in this Agreement within the time set forth, then District shall be entitled to the recovery of proximate damages resulting from such failure.

C. *Suspension and Termination.*

- 1) *Suspension.* District may suspend the Services upon five days written notice to Service Provider.
- 2) *Termination.* The obligation to provide further Services under this Agreement may be terminated for cause by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

D. *Payments Upon Termination.* In the event of any termination under this Section 4, Service Provider will be entitled to invoice the District and to receive payment for all acceptable services performed or furnished and all reimbursable expenses incurred through the effective date of termination.

5. Independent Contractor: Service Provider, in performing Services, shall act as an independent contractor and shall have control of his work and the manner in which it is performed. He/she shall be free to contract for similar services to be performed for others while under contract with the District. Service Provider is not to be considered an agent or employee of the District. Service Provider agrees to furnish at his/her own expense all tools, equipment, services, labor and materials necessary to complete all requirements of this Agreement.
6. Insurance: (Aspects of this section are still being negotiated.) All Work shall be performed entirely at the Service Provider's risk. Prior to the beginning of and throughout the duration of the Work, Service Provider shall procure and maintain for the duration of the contract, and for a minimum of three (3) years after completion of all Work, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Service Provider, his agents, representatives, employees, or subcontractors. All insurance carriers shall be admitted in the state of California and have an A.M. Best's rating of A- or better and minimum financial size VII. Coverage shall be at least as broad as the following minimum limits:
  - A. *Commercial General Liability:* Insurance Services Office (ISO) "Commercial General Liability" policy form ISO 01 04 13 or the exact equivalent on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence for all covered losses. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Additional insured coverage for the District shall not be limited to its vicarious liability, for the operations of Service Provider. Defense costs must be paid in addition to limits.
  - B. *Automobile Insurance:* ISO Auto Coverage Form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$2,000,000 per accident for bodily injury and property damage. If Service Provider or Service Provider's employees will use personal autos on this project, Service Provider shall provide evidence of personal auto liability coverage for each such person

- C. *Workers Compensation Insurance*: covering all employees and volunteers as required by the State of California on a state-approved policy form, and Employer's Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease
- D. *Excess or Umbrella Liability Insurance (Over Primary)*: if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Such policy or policies shall include a drop down provision providing coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. The policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to District for injury to employees of Service Provider, sub-contractors or others involved in performing services under this Agreement. The scope of coverage provided is subject to approval of District following receipt of proof of insurance as required herein.
- E. *General Conditions Pertaining to Insurance*:
- (1) Service Provider shall have its insurer endorse the third-party general liability coverage to include as additional insureds the District, its officials, employees, volunteers and agents, using standard ISO endorsement CG 20 10. The additional insured coverage under Service Provider's policy shall be provided on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the District. Service Provider's policy shall not seek contribution from the District's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.
  - (2) All self-insured retentions (SIR) must be disclosed to the District for approval and shall not reduce the limits of liability.
  - (3) The District reserves the right to obtain a redacted copy of any insurance policy and any endorsement. Failure to exercise this right shall not constitute a waiver of the District's right.
  - (4) Certificates shall contain a statement that the policy will not be cancelled except after prior written notice to the District.
  - (5) Service Provider agrees to waive subrogation rights against the District regardless of the applicability of any insurance proceeds, and to require that all subcontractors and sub-subcontractors do likewise.
  - (6) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all required coverages and an additional insured endorsement to Service Provider's general liability policy, shall be delivered to the District at or prior to the execution of the Contract.
  - (7) All coverage types and limits required are subject to approval, modification and additional requirements by the District, as the need arises. Service Provider shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the District's protection without the District's prior written consent.
  - (8) The District reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving the Service Provider ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Service Provider, the District

will negotiate additional compensation proportional to the increased benefit to the District.

(9) In the event Service Provider fails to obtain or maintain completed operations coverage as required by this Contract, the District at its sole discretion may purchase the coverage required and the cost will be paid by Service Provider.

7. Indemnity: (Aspects of this section are still being negotiated.) When the law establishes a professional standard of care for Service Provider's services, to the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless District and any and all of its boards (including the council, boards, commissions, committees and task forces), officials, and employees (collectively, "Indemnified Parties") from and against losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs to the extent same are caused by a negligent or wrongful act, error or omission of Service Provider, its officers, agents, employees or any entity or individual for which Service Provider shall bear legal liability in the performance of professional services under this Agreement.

Other than in the performance of professional services and to the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless District, and any all of the Indemnified Parties from and against liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs, including reasonable attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), to the extent caused by the negligent performance of this Agreement by Service Provider or by any individual or entity for which Service Provider is legally liable, including but not limited to officers, agents, employees or sub-Service Providers of Service Provider.

8. Subcontracting: No services covered by the Agreement shall be subcontracted without the prior written consent of the District. Service Provider shall furnish separate insurance certificates and endorsements for each subcontractor having received consent by the District in the amounts specified in Section 4 of this Agreement.

9. Registration with Department of Industrial Relations: If the tasks performed by the Service Provider require prevailing wage, the Service Provider shall be currently registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5.

10. Permits and Licenses: Prior to execution of the Agreement the Service Provider shall obtain and maintain throughout the contract period all licenses required by law including but not limited to a valid business license.

11. Modification, Amendment: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

12. Assignment. This Agreement is not assignable by the Service Provider, either in whole or in part.

13. Designated Representatives. With the execution of this Agreement, Service Provider and District shall designate specific individuals to act as Service Provider's and District's representatives with respect to the services to be performed or furnished by Service Provider and responsibilities of District under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and implement the contract on behalf of each respective party.

**District Representative:**

Name:

Title:

Phone: 707-443-0801

Email:

**Service Provider Representative:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

14. Governing Law: This Agreement and performance hereunder and all suits and special proceedings shall be construed in accordance with the laws of the State of California. In any action or proceeding that may be brought from or connected in anyway to this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law any other forum. Venue shall be fixed in Humboldt County.
15. Disputes. District and Service Provider agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking any procedures of this Agreement, or exercising their rights under law. Prior to court action, the parties agree to pursue mediation as a means to settle any dispute.
16. Entire Agreement. This Agreement together with the exhibits identified below constitutes the entire Agreement between District and Service Provider for the Services and supersedes all prior written or oral understandings.
17. Nondiscrimination. During the performance of this Agreement, Service Provider and its sub-contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age, or denial of family-care leave, medical-care leave, or pregnancy-disability leave. Service Provider and its sub-contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.
18. Notices. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
19. Severability. Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon District and Service Provider, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
20. Survival. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
21. Timeliness. Time is of the essence in this Agreement. Service Provider shall proceed with and complete the Services in an expeditious manner.

22. Exhibits Included. The following Exhibits are attached hereto and incorporated into this Agreement:

Exhibit A: Scope of Work and Compensation

25. Attorney's Fees: Should any litigation or arbitration be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such litigation or arbitration shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such litigation or arbitration.

*(Signatures on next page)*

**IN WITNESS WHEREOF**, the person executing this Agreement on behalf of Service Provider warrants and represents that he/she has the authority to execute this Agreement on behalf of Service Provider and has the authority to bind Service Provider to the performance of its obligations hereunder.

Executed in Eureka, California on \_\_\_\_\_ (date)

**DISTRICT:**

By: Larry Oetker

Signature: \_\_\_\_\_

Executive Director

Date: \_\_\_\_\_

By:

Signature: \_\_\_\_\_

President, Board of Commissioners

Date: \_\_\_\_\_

Approved as to form:

Signature: \_\_\_\_\_

Paul Brisso, District Counsel

**SERVICE PROVIDER:**

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Contractor's License #: \_\_\_\_\_

Employer Tax ID#: \_\_\_\_\_

DIR ID #: \_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES AND COMPENSATION





**EXHIBIT A**

**SCOPE OF WORK AND FEE**

**WORK ORDER # 1**

Whereas a Professional Consulting Services Agreement (AGREEMENT) was entered on March 10<sup>th</sup>, 2021 for Mitigation Services between GHD Inc, and the Humboldt Bay Harbor, Recreation and Conservation District (District).

This Work Order is related to Task A, Mitigation Design for the proposed bay water intakes at RMT II Dock and Red Tank Dock and Task C, Suction Dredging at Woodley Island Marina and Other Humboldt Bay Locations, as described in the February 1, 2021 Request for Qualifications.

**CLIENT:**

**CONSULTANT:**

Name: HB, Recreation and Conservation District

Name: GHD Inc.

Address: 601 Startare Drive

Address: 718 3 Third Street

Eureka, CA 95501

Eureka, California 95501

Phone: 707-443-0801

Phone: 707-443-8326

Email: awagschal@humboldtby.org

Email: Misha.schwarz@ghd.com

This scope of work and fee defines Work Order #1. Below is the scope and associated fee.



For Task 1, GHD's team will identify mitigation opportunities for proposed water intakes at Redwood Marine Terminal II and Red Tank Dock and suction dredging at Woodley Island Marina and other Humboldt Bay locations. For Task 2, GHD's team will develop brief descriptions of likely restoration scenarios for up to five priority sites identified during Task 1.

**Compensation:** Based on the employee rates shown in the GHD proposal, time and materials not to exceed \$27,000 for Tasks 1 and 2.

### **Task 1-Identification of mitigation opportunities**

This task will serve to identify sites where habitats will be restored as mitigation for proposed water intakes and suction dredging.

The following services will be provided:

- Review existing reports.
- Identify approximately 20 potential habitat restoration sites to be prioritized for mitigation efforts. Harbor District staff will provide a list of potential sites to build upon.
- Assemble spatial data on Humboldt Bay from existing sources (primarily GIS).
- Conduct visits to 5-6 sites (including but not limited to Bay Street Properties, King Salmon and Kramer Dock).
- Prepare Preliminary Screening Memo of the top 5-10 sites.

The Preliminary Screening Memo will discuss methods, existing data and data gaps. The Memo will include a matrix including the following information 1) site location, 2) ownership and easements, 3) data gaps, 4) type of potential mitigation (i.e., eel grass, tidal marsh, mud flat, living shoreline, transitional, etc.) and area, 5) relative cost of mitigation (low, medium, high, very high), 6) sea level rise resiliency, 7) flooding considerations, 8) ease of permitting, and 9) suggested prioritization.

**Deliverable:** Draft and final Screening Memo.

### **Task 2-Priority Sites Graphics and Descriptions**

For up to five high priority sites, GHD's team will develop brief descriptions and accompanying GIS-generated graphics (as applicable) of likely restoration scenarios. These scenarios will provide a basis for determining what types of special studies and analysis will be required to develop completed conceptual designs and be used to present to permitting agencies for their input.

**Deliverable:** Brief descriptions and accompanying GIS-generated graphics (as applicable) of likely restoration scenarios for up to five priority restoration sites.



CLIENT:

CONSULTANT:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Larry Oetker

NAME: Charles Smith

TITLE: Executive Director

TITLE: Business Group Leader

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_