



**Invitation for Bids  
Humboldt Bay Piling Removal Project  
Samoa, California  
January 2019**

# **Invitation for Bids**

## **Humboldt Bay**

### **Piling Removal Project**

#### **Samoa, California**

**Including:**

**Notice to Contractors,  
Bid and Contract Documents**

**Prepared By:**

**Humboldt Bay Harbor, Recreation & Conservation  
District**

January 2019

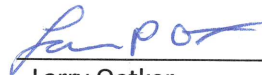
**Bid Opening:**

2:00 p.m., Wednesday January 23, 2019  
Humboldt Bay Harbor, Recreation & Conservation District  
601 Startare Drive Eureka, CA 95501  
707-443-0801

**Project Site Inspection:**

2:00 p.m., Wednesday January 16, 2019  
Samoa, CA 95564

Approved:



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Larry Oetker  
Executive Director

## HUMBOLDT BAY PILING REMOVAL PROJECT

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- A. Marine Habitat Mitigation Plan
- B. California Coastal Commission Permit
- C. U.S. Army Corps of Engineers Permit
- D. North Coast Regional Water Quality Control Board Certification

## NOTICE TO CONTRACTORS

The Humboldt Bay Harbor, Recreation and Conservation District is soliciting bids from qualified individuals/firms for the following work:

### HUMBOLDT BAY PILING REMOVAL PROJECT

Sealed bids will be received by the Humboldt Bay Harbor, Recreation and Conservation District (District), 601 Startare Drive, Eureka, CA 95501, until the hour of **2:00 p.m. on Wednesday the 23<sup>rd</sup> January 2019**, at which time they will be transferred to the Woodley Island Marina Conference room where they will be publicly opened and read aloud by the Director of Facilities Operations or his designated representative. Said bids will be referred to the District Board of Commissioners for consideration at their next regular meeting on January 24, 2019.

A project site inspection will be held on **Wednesday, January 16<sup>th</sup> 2019 at 2:00 p.m.** Interested parties should meet at the location of the northern set of pilings slated for removal as indicated in Attachment A, also known as "Red Tank Dock". Contact Bernadette Clueit at 707-443-0801 for directions if necessary.

**General Scope of Work:** The Work of this Contract comprises the removal of twenty-one (21) derelict piles from two locations on Humboldt Bay utilizing vibratory extraction with land-based and/or marine-based equipment. All pilings removed become the property of the Contractor, and Contractor will be responsible for appropriate disposal, which may include reuse of piles in an upland location outside of the Coastal Zone and/or transportation to a suitable landfill. All removal work will be limited to high tides of a minimum height of 4.0 feet to avoid damage to eelgrass beds and scarring of mudflats. Additionally, Contractor will be required to comply with all Best Management Practices (BMPs) for the project as described in Appendix A, and the requirements of all applicable Agency Permits (see Appendices B-D). Work is planned for completion in March 2019.

All other items or details not mentioned above that are required for the completion of the project shall be furnished, fabricated, constructed, or installed.

The foregoing quantities are approximate only, being given as a basis for the comparison of bids, and the District does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work or to omit portions of the work, as may be deemed necessary or expedient by the District.

Bid Package, including this Notice to Contractors, Proposal Forms for bidding this project and Contract Agreement can be reviewed in person at the offices of the Humboldt Bay Harbor, Recreation & Conservation District, 601 Startare Drive, Eureka, CA 95501; District website [www.humboldtбай.org](http://www.humboldtбай.org) ; or at the Humboldt Builders' Exchange in Northern California and the Daily Journal of Commerce in Oregon.

No bid will be considered unless it is made on the blank Bid Proposal forms included in this volume, pages C-8 through C-14 (bidders shall remove or copy the Bid Proposal forms and submit the completed forms as part of the bid proposal package), and unless it is accompanied by a Proposal Guaranty in the form of cash, bid bond, certified check, or cashier's check made payable to the Humboldt Bay Harbor, Recreation & Conservation District, in an amount equal to ten percent (10%) of the bid amount.



Each bidder and subcontractor must be licensed as required by law, and each is required to obtain a Business License from the agency having jurisdiction over the area where the work is to be performed, and to submit a copy of the license to the District prior to performing any work on the project.

All Contractors shall possess appropriate Contractor's Licenses for their trade at the time the contract is awarded.

Each Bid Proposal, along with any required supporting bid materials shall be submitted in a sealed envelope bearing the title of the work – **Humboldt Bay Piling Removal Project** – and the name of the bidder.

The Humboldt Bay Harbor, Recreation and Conservation District reserves the right to reject any or all bids.

The Contractor shall be permitted to substitute authorized securities under Public Contract Code Section 22300 for any monies withheld by the District to ensure performance under this contract.

**This is a prevailing wage contract.**

The minimum wage rate to be paid under this contract shall be the current prevailing wage for each classification as determined by the Director of the California Department of Industrial Relations, pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1.

Copies of the current prevailing wage rates are available on the internet at the following URL:

<http://www.dir.ca.gov/DLSR/PWD/>

Out of State bidders shall note that, in accordance with California Revenue and Taxation Code (RT&C) Section 18662 and the related regulations requiring withholding of income or franchise tax on certain payments made to nonresidents of California for personal services performed in California, the District is required to withhold and send to the State seven percent (0.07) of all payments exceeding \$1,500. These provisions apply to payments for this project.

Dated: 1-07-19

  
\_\_\_\_\_  
Larry Oetker  
Executive Director

# **Bid and Contract Documents**

# PROPOSAL REQUIREMENTS AND CONDITIONS

## 1. Bid Proposal Forms

All bid proposals shall be made upon the blank Bid Proposal forms, pages C-8 through C-14 included in this volume, which shall be copied or detached and submitted as part of the bid proposal package.

Please note that additional materials may be required to be submitted for a complete bid proposal package. Bidders are directed to read the contract provisions thoroughly to understand any additional funding agency or other project or bid requirements. Proposals submitted on forms other than those included in this volume will be disregarded. All proposals must give the proposed unit prices, both in writing and in figures, and shall contain original signatures in ink by the bidder, with bidder's address. Where required on the bid form, bidders must quote on all items, and they are hereby warned that failure to do so may disqualify the bid. When quotations on all items are not required, bidders shall insert the words "No Bid" in the space provided for any item on which no quotation is made. If the proposal is made by an individual, that individual's name and Post Office address shall be shown; if made by a firm or partnership, the name and Post Office address of each member of the firm or partnership shall be shown; or if made by a corporation, the proposal shall show the name of the State under the laws of which the corporation was chartered and the names, titles, and business addresses of the President, Secretary, and Treasurer.

Bids shall be delivered to the Humboldt Bay Harbor, Recreation and Conservation District, on or before the day and hour set for the opening of bids in the advertised "Notice to Contractors." The bids shall be submitted in a sealed envelope and shall bear the title of the work and the name of the bidder. It is the sole responsibility of the bidder to see that his bid is received by the proper time. All bids received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

## 2. Approximate Estimate

The quantities given in the proposal and contract forms are approximate only, being given as a basis for any comparison of bids, and the District does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work or to omit portions of the work, as may be deemed necessary or expedient by the District.

## 3. Examination of Plans, Specifications, Special Provisions, and Site of the Work

The bidder shall carefully examine the site of the work contemplated and the proposal, plans, specifications, and contract forms therefor. It will be assumed that the bidder has investigated and is satisfied as to the conditions to be encountered regarding character, quality, and quantities of work to be performed and the materials to be furnished and as to the requirements of these Specifications, Special Provisions, and the Contract. It is mutually agreed that submission of a bid shall be considered "prima facie" evidence that the bidder has made such examination.

**4. Bid Guaranty**

Each bid shall be accompanied by one of the following forms of bidder's security: cash, certified cashier's check, or a bidder's bond executed by an admitted surety insurer, made payable to the Humboldt Bay Harbor, Recreation and Conservation District for an amount equal to at least ten percent (10%) of the total bid amount. No bid will be considered unless such cash, certified cashier's check, or bidder's bond is enclosed therewith. The bidder's security shall be attached to page C-8 of the Bid Proposal.

**5. Designation of Subcontractors**

All subcontractors doing work in excess of one-half of one percent (0.50%) of the total bid amount shall be designated on page C-9 of the Bid Proposal.

**6. Rejection of Bids**

Bids may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. The District reserves the right to reject any and/or all Bids.

**7. Withdrawal of Bids**

Any bid may be withdrawn at any time prior to the hour fixed in the "Notice to Contractors" for the opening of bids provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal of such bid is filed with the District. The withdrawal of a bid will not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the advertised "Notice to Contractors," a bid will not be received after that time, nor may a bid be withdrawn after the time fixed in such notice.

**8. Disqualification of Bidders**

More than one bid from an individual, firm, partnership, or corporation, or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any bidder is interested in more than one bid for the work contemplated will cause the rejection of all bids in which such bidder is interested. If there is reason for believing that collusion exists among bidders, none of the participants in such collusion will be considered in future proposals. Bids in which the prices obviously are unbalanced may be rejected.

**9. Competency of Bidders**

Bidders must be capable of performing the various items of work bid upon. If requested by the District, the lowest bidder shall furnish, prior to the award of the contract, a satisfactory statement of his financial responsibility, technical ability, project references, and experience. The District reserves the right to disqualify bidders who do not exhibit proof of competency, or whose performance on past projects has not been satisfactory, in the opinion of the District.

## **10. Materials Guaranty**

Before any contract is awarded, the bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any and all materials to be used in the construction of the work, together with samples, which may be subjected to tests provided for in these Specifications, to determine the quality and fitness of said materials for the work.

## **11. Addenda**

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the Bid Package or other proposed Contract Documents or finds discrepancies in or omissions, he may submit a written request for an interpretation or correction thereof. Questions should be submitted to:

Humboldt Bay Harbor, Recreation and Conservation District  
Attn: Bernadette Clueit  
601 Startare Drive  
Eureka, CA 95501  
[bclueit@humbolddbay.org](mailto:bclueit@humbolddbay.org)

The person submitting the request shall deliver said request **no later than** seven (7) days prior to the bid opening date. Any interpretation or correction of the proposed documents will be made only by an Addendum duly issued; and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents. The District will not be responsible for any other explanations or interpretations of the proposed documents.

## **12. Waste Reduction and Recycling Program**

The California legislation AB 939 (1989 CA Integrated Waste Management Act) requires all cities and counties in California to divert 50% of their waste streams away from landfills through recycling, reuse, and reduction programs. The District strongly recommends that applicable construction/demolition debris be diverted out of landfills whenever possible. To help facilitate the tracking of material diverted out of landfills for this project, a "MATERIAL RECYCLING INFORMATION FORM" is included in this contract on page C-10, which the Bidder shall fill out and submit as part of these bid documents.

## **AWARD AND EXECUTION OF CONTRACT**

### **1. Award of Contract**

The award of the contract, if it is awarded, will be to the lowest responsible bidder whose proposal complies with all prescribed requirements.

The District, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Commerce (15 C.F.R., Part 8), issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, or national origin.

The District Board of Commissioners, however, reserves the right to reject any or all bids and to waive any informality or irregularity in bids received. The Board of Commissioners also reserves the right to reject the bid of any bidder who has previously failed to perform properly or did not complete on time contracts with the District of a nature similar to this project.

Such award, if made, will be made within ten (10) days after the opening of the proposals, and a Notice of Award will be sent to the successful bidder. All bids will be compared on the basis of the estimate of the quantities of work to be done.

### **2. Contract Bonds**

See "Item 6: Bonds and Surety Qualifications" of the Contract Agreement on page C-16.

### **3. Execution and Return of Contract Agreement Package**

The following documents shall constitute the Contract Agreement Package:

- A. Contract Agreement
- B. Insurance Documentation (on forms acceptable to the District)
- C. Performance Bond
- D. Labor and Material Bond

The Contract Agreement shall be executed, and the Contract Agreement Package shall be returned to the District within ten (10) days (not including Sundays) after the bidder has received the Notice of Award.

The Contract Agreement will not be executed by the District until the required insurance certificates and all endorsements, or other sufficient proof that the Contract insurance provisions have been complied with, are submitted, approved, and filed with the District. No proposal shall be considered binding upon the District until the execution of the Contract Agreement by the District.

**4. Failure to Execute Contract Agreement or Provide Acceptable Bonds or Insurance**

Failure to execute and submit the Contract Agreement within ten (10) days (not including Sundays) after the successful bidder has received the Notice of Award shall be just cause for the annulment of the award. Failure of the successful bidder to provide acceptable bonds or insurance documents within fourteen (14) days (not including Sundays) after the bidder has executed and returned the Contract Agreement Package to the District shall also be just cause for the annulment of the award. In the event the award is annulled, the bidder's Proposal Guaranty shall be forfeited to the District.

If the successful bidder refuses or fails to execute the Contract Agreement, the Board of Commissioners may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the Contract Agreement, the Board of Commissioners may award the contract to the third lowest responsible bidder. On the failure or refusal of the second or third lowest responsible bidder to whom any such contract is so awarded to execute the Contract Agreement, the bidders' Proposal Guaranties shall be likewise forfeited to the District, and the work may then be re-advertised or may be constructed by day labor, as the Board of Commissioners may decide.

**5. Return of Proposal Guaranties**

Within ten (10) calendar days after the award of the contract, the District will return the Proposal Guaranties accompanying the bids that were not considered in making the award. All other Proposal Guaranties will be held until the contract has been executed, after which they will be returned to the respective bidders.

**6. Insurance**

See "Item 8: Insurance" of the Contract Agreement on page C-16 thru C-18.

**(BID PROPOSAL)**

**BIDDER'S SECURITY**

(Attach to this page)



**(BID PROPOSAL)**

**DESIGNATION OF SUBCONTRACTORS**

The Contractor must list all subcontractors doing work in excess of 0.50% of total bid amount. The undersigned certifies that he has used the sub-bids of the following listed subcontractors in making up his bid and that the subcontractors listed will be used for the work for which they bid, subject to the approval of the District, and in accordance with applicable provisions of these Specifications and Plans.

<u>Bid Item No.</u>	<u>Subcontractor</u>	<u>Address &amp; Tel. No.</u>	<u>State License No.</u>
<hr/>	<hr/>	<hr/>	<hr/>
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---

Date

---

Bidder's Name

---

Address

---

Authorized Signature

---

Type of Organization  
(Individual, Partnership or Corporation)

---

Telephone Number

---

State Contractor's Lic. No. & Exp. Date

**(BID PROPOSAL)**

**MATERIAL RECYCLING INFORMATION FORM**

**Humboldt Bay Piling Removal Project**

(Note: Recycling information requested and listed on this page is being collected for internal audit use only. It will not be used in any way related to the award of the project.)

Bid Item No.	Description of item to be recycled	Estimated tonnage of item to be recycled	Name & address of recycling facility

---

Date

---

Bidder's Name

---

Address

---

Authorized Signature

---

Type of Organization  
(Individual, Partnership or Corporation)

---

Telephone Number

---

State Contractor's Lic. No. & Exp. Date

**(BID PROPOSAL)**

**NONCOLLUSION DECLARATION TO BE EXECUTED BY BIDDER**  
**AND SUBMITTED WITH BID**

**Humboldt Bay Piling Removal Project**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ (DATE),  
at \_\_\_\_\_ (DISTRICT), \_\_\_\_\_ (STATE).

\_\_\_\_\_  
Bidder's Name

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

\_\_\_\_\_  
Address 1

\_\_\_\_\_  
Type of Organization  
(Individual, Partnership or Corporation)

\_\_\_\_\_  
Address 2

\_\_\_\_\_  
State Contractor's Lic. No. & Exp. Date

**(BID PROPOSAL)**

PROPOSAL TO THE BOARD OF COMMISSIONERS  
OF THE HUMBOLDT BAY HARBOR, RECREATION & CONSERVATION DISTRICT

FOR

**Humboldt Bay Piling Removal Project**

To the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District:

The undersigned, as Bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location(s) of the proposed work and the proposed form of the contract and the plans and specifications; and he agrees if this proposal is accepted, that he will contract with the Humboldt Bay Harbor, Recreation and Conservation District, in the form of the contract annexed hereto, to provide all necessary machinery, tools, apparatus, and other means of construction and to do all the work and furnish all the materials specified in the contract in the manner and time prescribed and according to the requirements of the Engineer; that he will provide the bonds as required herein at the time he executes the contract; that he will provide proof of insurance as provided herein; that he will begin the work on the project within TEN (10) CALENDAR DAYS after receiving notice from the District to proceed and diligently prosecute the same to completion before the expiration of **March 30, 2019** (unless extension is granted) from the date of commencement of the work; and that as provided for in the General Provisions, the liquidated damage shall be in the sum of **Two Hundred Fifty (\$250.00)** per day for each and every calendar day delay in finishing the work beyond the time described herein; and that he will take in full payment therefore the following unit or lump sum prices, as the case may be, to wit:

**SEE BID SCHEDULE ON FOLLOWING PAGE**

**(BID PROPOSAL)**

<b>Bid Schedule</b> <b>Humboldt Bay Harbor, Recreation, and Conservation District</b> <b>Humboldt Bay Piling Removal Project</b>				
<b>Bid Item No.</b>	<b>Approx. Quantity</b>	<b>Bid Item Description with Total Price Written in Words</b>	<b>Unit Price</b>	<b>Total Item Price</b>
1 BASE	Lump Sum	Mobilization and Demobilization fixed at _____ _____ Dollars.	N/A	\$ _____
2 BASE	Lump Sum based on 21 piles	Vibratory extraction and disposal/recycling of derelict pilings _____ _____ Dollars.	N/A	\$ _____
<b>BASE BID TOTAL</b>				<b>\$ _____</b>

TOTAL BASE BID AMOUNT IN NUMBERS: \$ \_\_\_\_\_

TOTAL BASE BID AMOUNT IN WORDS:

\_\_\_\_\_

**ADDITIONAL REQUIRED BID ITEMS:**

Stand-by time at \$ \_\_\_\_\_ per hour.

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Company

**BIDDER MUST SIGN THIS PAGE**

## **(BID PROPOSAL)**

It is further understood and agreed that:

- A. In case of a discrepancy between words and figures, the words shall prevail, and in case of a discrepancy between unit prices and totals, the unit price shall prevail.
- B. The District reserves the right to eliminate any section of this proposal from the contract without claim of the Contractor for profits lost.
- C. No verbal agreement or conversation with any officer, agent, or employee of the District, either before or after the execution of the Agreement, shall affect or modify any of the terms or obligations of this proposal.
- D. The District will not be responsible for any errors or omissions on the part of the undersigned in making up his bid, nor will the bidder be released on account of errors.
- E. The undersigned bidder is properly licensed in accordance with the State of California Contractors' State License Law providing for the registration of Contractors.
- F. If the proposal is accepted and the undersigned shall fail to contract as aforesaid and to give the two bonds in the sums to be determined as aforesaid, with surety satisfactory to the Board of Commissioners, within FOURTEEN (14) CALENDAR DAYS (not including Sundays) after the bidder has received the Notice of Award, the District may, at its option, determine that the bidder has abandoned the contract, and thereafter this proposal and the acceptance thereof shall be null and void.
- G. The undersigned bidder certifies that he has confirmed that the proposed form of contract and the Plans and Specifications are complete.

---

Date

---

Bidder's Name

---

Address

---

Authorized Signature

---

Type of Organization  
(Individual, Partnership or Corporation)

---

Telephone Number

---

State Contractor's Lic. No. & Exp. Date

THE ABOVE SIGNED ACKNOWLEDGES THAT THESE REPRESENTATIONS ARE MADE  
UNDER PENALTY OF PERJURY.

**CONTRACT AGREEMENT**

HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT  
HUMBOLDT BAY PILING REMOVAL PROJECT

This CONTRACT is made and entered into this \_\_\_\_\_ ( ) day of \_\_\_\_\_ 20\_\_\_\_, by and between the Humboldt Bay Harbor, Recreation, and Conservation District, a California public entity ("District"), and \_\_\_\_\_ as ("Contractor").

The parties agree as follows:

1. Scope of Services: Contractor agrees to complete all work as specified in the Technical Specifications, attached hereto and incorporated herein ("Work"). All work shall be completed in accordance with the Contract Documents.
2. Contract Documents Include: The contract documents include this Contract, all Plans and Specifications, including the Greenbook (BNI Publications, Inc., 2018 edition available on line), the Notice Inviting Proposals, the Certificates of Insurance, Workers' Compensation Certificate, and Bonds (if any) ("Contract Documents"). All of the provisions of the Contract Documents are hereby incorporated in and made a part of this Contract as if fully set forth herein.
3. Compensation: The District shall pay Contractor for the price set forth by him/her in the accepted Bid. The total compensation to be paid will be computed on the basis of the quantity of work actually performed in accordance with the Contract Documents, and paid for at the stipulated contract unit or lump sum prices, as the case may be.
4. Payment: Contractor shall submit monthly invoices for completed tasks as outlined in the submitted Bid Schedule. All invoices must include Purchase Order No \_\_\_\_\_. Invoices received without reference to correct Purchase Order Number will be returned to Contractor without processing. The District agrees to pay invoices within 30 days upon receipt of invoice less 10% until approval and acceptance of completed project. The final invoice will be paid within 30 days from the District's acceptance and approval of completed project. All payments are subject to final audit upon completion of services or other termination of this Contract.
5. Commencement of Work, Time for Completion: No Work shall be performed or furnished under this Contract until the District has delivered a signed Contract and Notice to Proceed to the Contractor. The Contractor shall complete the Work by \_\_\_\_\_, (the "Completion Date"). An extension to the Completion Date may be allowed in accordance with Section 34, Uncontrollable Circumstances. The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the District Representative, to perform required activities at a pace sufficient to complete the Work by the Completion Date. If in the opinion of the District Representative, the Contractor has failed or is failing to employ sufficient force, materials, and tools, or, to maintain adequate progress, the District Representative may, at no additional cost to the District, require the Contractor to increase progress of work. The Contractor shall implement action required to increase progress and report the

action or actions to be taken to the District Representative within two work days following the District Representative's order to increase progress.

6. Bonds and Surety Qualifications: If indicated below, the successful Contractor shall, within 14 days of contract award and before execution of the contract, furnish a Bond for Faithful Performance and/or a Payment Bond (also called Labor and Materials Bond) on forms provided by the District, each in the amount of 100 percent of the contract price. The Bond for Faithful Performance shall remain in effect during the performance of the work, and for 365 days after recordation of a Notice of Completion, or if a Notice of Completion is not recorded by the District, within thirty days of completion of the Work. The Payment Bond shall remain in effect until recordation of the Notice of Completion, or if a Notice of Completion is not recorded by the District, for 60 days after completion of the Work. All Bonds shall be furnished by the Contractor at its own cost and expense. All bonds shall be executed by such sureties as are admitted to transact surety insurance in the State of California. Should an objection as to the sufficiency of an admitted surety on a bond be made, California Code of Civil Procedure Section 995.660 shall apply.

Performance Bond Required: ☒ Payment Bond Required: ☒ [check only if required]

7. Independent Contractor: Parties intend that the successful Contractor, in performing Work, shall act as an independent contractor and shall have control of his work and the manner in which it is performed. Contractor shall be free to contract for similar services to be performed for others while under contract with District, provided no conflict of interest is created. Contractor is not to be considered an agent or employee of District
8. Insurance: All Work shall be performed entirely at the Contractor's risk. Prior to the beginning of and throughout the duration of the Work, Contractor shall procure and maintain for the duration of the contract, and for a minimum of five (5) 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 Contractor, 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 CG 00 01 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. 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 \$1,000,000 per accident for bodily injury and property damage. If Contractor or Contractor's employees will use personal autos on this project, Contractor 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 coverage. 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. Such insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the District before the District's insurance or self-insurance shall be called upon to protect it as a named insured. 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 Contractor, sub-contractors or others involved in performing Work under this Contract. 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) Contractor 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 Contractor's policy shall be provided on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the District. Contractor'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) It is a requirement under this Contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage and/or limits required in this Section 8 shall be available to the District as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Contract, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.
- (3) All self-insured retentions (SIR) must be disclosed to the District for approval and shall not reduce the limits of liability. Policies containing any SIR shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the District.
- (4) The District reserves the right to obtain a full certified copy of any insurance policy and any endorsement. Failure to exercise this right shall not constitute a waiver of the District's right.
- (5) Certificates shall contain a statement that the policy will not be cancelled except after thirty (30) days prior written notice to the District.
- (6) Contractor 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.

- (7) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all required coverages and an additional insured endorsement to Contractor's general liability policy, shall be delivered to the District at or prior to the execution of the Contract.
  - (8) All coverage types and limits required are subject to approval, modification and additional requirements by the District, as the need arises. Contractor 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.
  - (9) 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 Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the District will negotiate additional compensation proportional to the increased benefit to the District.
  - (10) In the event Contractor 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 Contractor.
- (f) *Maritime Insurance:* Contractor shall provide and maintain insurance under the United States Longshore and Harbor Workers' Compensation Act if the work covered by the Agreement includes activities subject to that Act (work whole in in part upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or adjoining areas) throughout the duration of the Agreement.

Contractor shall provide and maintain insurance under the Jones Act in the event that the work covered by the Agreement includes activities covered by the Jones Act (including, but not limited to, work from ships, vessels, barges, or dredges) throughout the duration of the Agreement.

9. Indemnity:

- (a) To the fullest extent allowed by law, Contractor shall indemnify, defend and hold harmless the District and its officers, officials, employees, and volunteers through legal counsel reasonably acceptable to the District, from and against any and all claims, damages and expenses, including attorney fees and costs of litigation, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the District.
- (b) Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her/its sole expense and agrees to bear all other costs and expenses related thereto.
- (c) Contractor's responsibility for defense and indemnity obligations shall survive the termination or completion of this Contract for the full period of time allowed by law.

- (d) The defense and indemnification obligations of the Contract are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Contract.

10. Subcontracting:

- (a) Contractor shall comply with the Subletting and Subcontracting Fair Practices Act of Public Contracts Code Sections 4100 et seq.
- (b) Contractor shall submit to the District the following information as part of its bid proposal:
  - (1) The name and location of the place of business of each subcontractor performing work, labor or rendering construction services and each subcontractor licensed by the State of California specially fabricating and installing improvements according to detailed drawings or the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid.
  - (2) The portion of the Work to be done by each subcontractor.
- (c) Contractor shall list only one subcontractor for each portion of the Work identified in the bid.
- (d) Contractor shall include in all subcontracts and require of all subcontractors all insurance and indemnity requirements and provisions of the Contract that are applicable to any subcontractor's scope of work. Subcontractor's responsibility for defense and indemnity obligations shall survive the termination or completion of this Contract for the full period of time allowed by law.
- (e) Each subcontractor shall be obligated to Contractor and the District in the same manner and to the same extent as Contractor is obligated to the District under the Contract Documents. If hiring a sub-subcontractor to perform any Work, the subcontractor shall include in the sub-subcontract all provisions of the Contract Documents including all insurance and indemnity provisions that are applicable to said sub-subcontractor's scope of work.
- (f) Contractor shall furnish a copy of the Contract insurance and indemnity provisions to any subcontractor upon request. Upon request from the District, Contractor shall provide insurance certificates and endorsements of its subcontractors.

11. Registration with Department of Industrial Relations: Contractor and all subcontractors shall be currently registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

12. Prevailing Wages: This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. A determination of the general prevailing rates of per diem wages and holiday and overtime work where the work is to be performed is available for review upon request at District's Main office, 601 Startare drive Eureka Ca 95501. Contractor and subcontractors will not pay less than the prevailing rates of wages. Contractor will post one copy of the prevailing rates of wages at the job site. The statutory provisions for penalties for failure to comply with state's wage and hour laws will be enforced (Labor Code § 1813). Contractor shall forfeit as penalty to the District the sum of up to two hundred dollars (\$200.00) for each calendar day or portion thereof, and for each worker paid less than the prevailing rates under the contract.

### 13. Payroll Records:

- (a) Pursuant to California Labor Code Section 1776, 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 week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (1) The information contained in the payroll record is true and correct.
  - (2) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public work project.
- (b) The payroll records enumerated under paragraph (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated on paragraph (a) shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in paragraph (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b)(2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.
- (c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as provided by the division.
- (d) The Contractor or subcontractor shall file a certified copy of the records enumerated in paragraph (a) with the entity that requested the records within ten days after receipt of a written request.
- (e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated.

- (f) Agencies included in the Joint Enforcement Strike Force on the Underground Economy and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. The Contractor shall not be liable for damages due to good faith compliance with this subdivision.
  - (g) The Contractor shall inform the District of the location of the records enumerated under paragraph (a), including the street address, District and county, and shall, within five working days, provide a notice of change of location and address.
  - (h) The Contractor or subcontractor shall have ten days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the District, forfeit \$100 for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty assessment pursuant to this section due to a failure of a subcontractor to comply with this section.
  - (i) The Contractor and each subcontractor shall furnish all personnel records specified in Labor Code section 1776, as described in this section 13, directly to the Labor Commissioner at least monthly, or more frequently if specified in this contract, and in a format prescribed by the Labor Commissioner.
14. Audit of Records: Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the District or establishing the basis for an invoice, for a minimum of four years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow District representatives to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.
15. Hours of Work:
- (a) Eight hours labor constitutes a legal day's work. Workers shall be paid at a rate of one and one-half times the basic rate of pay for work in excess of eight hours during a calendar day or 40 hours during a calendar week of the foregoing hours.
  - (b) Contractor shall keep and make available an accurate record showing the name each worker and hours worked each day and each week by each worker.
  - (c) As a penalty to the District, Contractor shall forfeit twenty-five dollars (\$25.00) for each worker, including subcontractors' workers, for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 through 1815.
16. Document Submission and Title to Documents: All documents, reports, plans, specifications, maps, estimates, manuscripts, drawings, descriptions and other final work products compiled under this Contract must be submitted electronically in MS Word and PDF formats and in hard copy format.

Additionally, upon payment of fees and expenses due, title to all such documents shall be vested in the District.

17. Materials and Equipment:

- (a) Unless otherwise specified, shown, or permitted by the District, materials and equipment incorporated in the Work shall be new. The District may request the Contractor to furnish manufacturer's certificates to this effect.
- (b) The Contractor must furnish adequate equipment and facilities to properly perform the Work in a workmanlike manner in accordance with specifications set forth in this Contract. Such equipment and facilities must be in a good state of repair and maintained in such state during the progress of the Work and shall meet requirements of applicable ordinances and laws. No worn or obsolete equipment shall be used, and in no case shall the manufacturer's rating of capacity for equipment be exceeded.
- (c) Materials furnished and Work performed shall be subject to inspection and testing by District's authorized agents at District's expense. If such inspection and testing reveals non-compliance with the requirements of this contract, the Contractor shall bear the cost of necessary corrective measures and the cost of subsequent inspecting and testing.
- (d) The inspection of the Work shall not relieve the Contractor of the obligations under the contract. Even though equipment, materials, or Work required under the Contract have been inspected, accepted, and estimated for payment, the Contractor shall replace or repair such equipment, materials, or Work found to be defective or otherwise not to comply with the requirements of the contract up to the end of the maintenance and guarantee period.
- (e) Materials for use in the Work shall be stored by Contractor to prevent damage from exposure to the elements, admixture of foreign materials or from any other cause. Contractor is responsible for damage to or loss of materials by weather or other causes.

18. Permits and Licenses: Prior to execution of the Contract, the Contractor shall obtain and maintain throughout the contract period a valid business license. Contractor shall apply for and procure permits and licenses necessary for the Work. Contractor shall give notices necessary and incidental to the due and lawful prosecution of the Work and shall comply duly with the terms and conditions of permits and licenses. Contractor shall pay charges and fees in connection with permits and licenses.

19. Contractor Qualifications and Standard of Work: Contractor warrants that it is fully qualified to perform the Work, and holds all applicable licenses, permits, and other necessary qualifications. Contractor shall perform and complete in a good and workmanlike manner all the Work described in the Contract Documents, to furnish at its cost and expense all tools, equipment, labor and materials necessary therefor, except such materials as are specifically stipulated in the Contract Documents to be furnished by District, and to do everything required by this Contract and other contract documents. Contractor shall possess a valid Class C-12 and/or "A" (contractor license), or the appropriate special California contractor's license at the time of bid submission and for the duration of the Contract. The Contractor shall be responsible for complying with all applicable local, state, and federal laws and regulations whether or not expressly stated or referred to herein. Only competent workers shall be employed on the Work. Workers who are incompetent, intemperate, troublesome, disorderly or otherwise

objectionable, or who fail to perform Work properly and acceptably, shall be immediately removed from the Work by the Contractor and not re-employed.

20. Apprentices: Contractor shall comply with the Labor Code concerning the employment of apprentices.
21. Supervision of Work by Contractor: Before starting the Work, Contractor shall designate, in writing, a representative having authority to act for Contractor, and may designate an alternate representative. The representative or alternate shall be present at the work site when Work is in progress. Orders or communications given to this representative shall be deemed delivered to the Contractor. In the absence of the Contractor or designated representative, directions or instructions may be given by the District Representative to the superintendent or foreman having charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to the Contractor or the representative.
22. District Representative: The District Representative, as designated by the Executive Director for the District ("District Representative"), shall decide questions about the quality of materials furnished and Work performed, manner of performance, rate of progress of the Work, interpretation of the plans and specifications, and the fulfillment of the Contract by the Contractor.
23. Inspection:
- (a) The District Representative shall have access to the Work during construction and shall be furnished with reasonable facility for gaining knowledge of the progress, workmanship and character of materials used and employed in the work.
  - (b) When the Contractor varies the period during which Work is carried on each day, Contractor shall give notice to the District Representative so proper inspection may be provided. Work done in the absence of the District Representative is subject to rejection.
  - (c) No materials shall be installed until approved by the District Representative. Installations to be backfilled shall be inspected and approved by the District Representative prior to backfilling. The Contractor shall give notice in advance of backfilling to the District Representative so proper inspection may be provided.
  - (d) The inspection of the Work shall not relieve the Contractor of obligations to fulfill the contract. Defective Work shall be made good, and unsuitable materials may be rejected notwithstanding the fact such defective Work and unsuitable materials have been previously overlooked by the District Representative and accepted.
24. Removal of Defective and Unauthorized Work:
- (a) Rejected Work shall be removed and replaced by Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Work done beyond the lines and grades shown on the plans or established by the District Representative, or Work done without written authority will be considered as unauthorized and not be paid for. Such Work may be ordered removed at Contractor's expense.

- (b) Upon failure on the part of Contractor to comply promptly with an order of the District Representative under this section, the District Representative shall have authority to cause defective Work to be removed and replaced, and unauthorized Work to be removed, and to deduct the costs from monies due Contractor.

25. Errors Or Discrepancies Noted By Contractor:

- (a) If the Contractor finds discrepancy between the specifications and the drawings, and the physical conditions at the site of the Work or finds errors or omissions in the drawings or in any survey, Contractor shall promptly notify the District in writing of such discrepancy, error or omission. If the Contractor observes drawings or specifications at variance with applicable law, ordinance, regulation, order or decree, Contractor shall promptly notify the District in writing of such conflict.
- (b) On receipt of any such notice, the District shall promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, Work done by the Contractor, after Contractor's discovery of such error, discrepancy or conflict will be at Contractor's own risk and Contractor shall bear costs arising therefrom.

26. Cleanup: On completion of the Work, Contractor shall remove debris and surplus materials from the work site.

27. Guarantees: Contractor guarantees Work from defect in workmanship for the period of one year from the date of acceptance by the District and shall repair and replace such Work, together with other displaced work, without expense to the District, ordinary wear and tear, usual abuse or neglect excepted. District may have the defects repaired and made good at the expense of the Contractor, if Contractor fails to comply with the above-mentioned conditions within a week after being notified in writing.

28. Safety: Contractor and subcontractors shall comply with the provisions of the Safety and Health Regulations for Construction, promulgated by the Secretary of Labor under the Contract Work Hours and Safety Standards Act, as set forth in Title 29, C.F.R. and by the California Division of Industrial Safety. Contractor shall take all precautions necessary for the safety and prevention of damage to property on/or adjacent to the work site, and for the safety of and prevention of injury to persons, including District's employees, Contractor's employees, and third persons, on/or adjacent to the work site.

29. Termination: Contractor at Fault:

- (a) The District shall have the right to terminate the Contractor for cause under any one or more of the following circumstances:
  - (1) Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, failure to adhere to the progress schedule as approved from time-to-time by the District Representative, failure to adhere to the schedule of values as approved from time-to-time by the District Representative);
  - (2) Contractor's disregard of applicable laws and regulations;



- (3) Contractor's repeated disregard of the authority or orders of the District Representative;
  - (4) Contractor's repeated or persistent default of any of the provisions of the Contract Documents;
  - (5) Contractor's material breach of any provision of the Contract Documents;
  - (6) Contractor's failure to perform Work for a period of five consecutive work days unless such failure is excused because of inclement weather or Uncontrollable Circumstance.
- (b) If one or more of the grounds for termination exist, the District, after giving the Contractor and the performance surety five days written notice, may at its sole discretion, without liability for trespass or conversion, take any of the following actions: terminate the service of the Contractor; exclude the Contractor from the site; take possession of the site and Work; take possession of all of Contractor's tools, appliances, construction equipment, and machinery at the site; take possession of all materials and component parts, equipment, or machinery stored at the site or for which the Contractor has paid but which are stored elsewhere; use the site, tools, appliances, construction equipment, machinery, parts, and materials to the full extent they could be used by Contractor; finish the Work as the District may deem expedient; or make demand on the performance bond surety to complete the Work. When the District terminates Contractor's services under this Section, Contractor shall not be entitled to receive further payments until the Work is completed. If the unpaid balance of the Contract Price is greater than all claims, costs, losses, offsets and damages (including without limitation all fees and charges of engineers, architects, land surveyors, contractors and other providers of professional services) sustained by the District arising out of or relating to completing the Work or exercising its rights under this Section, the excess will be paid to Contractor or the performance bond surety. If the unpaid balance of the Contract Price is less than all claims, costs, losses, offsets and damages (including without limitation all fees and charges of engineers, architects, land surveyors, contractors and other providers of professional services) sustained by the District arising out of or relating to completing the Work or exercising its rights under this Section, Contractor will pay the difference to the District. When exercising any rights or remedies under this Section, the District shall not be required to obtain the lowest price for the Work performed.
- (c) The termination of Contractor's services under this paragraph will not affect any rights or remedies the District may have against Contractor existing at the time of termination or which may later accrue. Any release of retention or payment by the District will not release Contractor from liability.

**30. Termination: Contractor Not at Fault:**

- (a) Upon five days' written notice to Contractor, the District may, without cause and without prejudice to any other of the District's rights or remedies, terminate the Contract.
- (b) Upon the service of a notice of contract termination, Contractor shall discontinue the Work in the manner, sequence, and at such times as directed by the District Representative. Contractor shall remain responsible for the quality and fitness of the Work performed by Contractor before termination of the Contract. All requirements of the Contract pertaining to Work completed or to be completed as directed by the District Representative as of the time of termination shall survive the termination, including without limitation, all indemnities, warranties, requirements for

preparation of record drawings and completion of any "punch-list" items directed by the District Representative. Contractor shall cooperate with District with respect to providing information about the work in progress at the time of termination, as requested by the District Representative.

- (c) Upon termination of the Contract, District shall use reasonable efforts to determine and pay to Contractor within 30 days, without duplication, for the following items:
  - (1) For completed and acceptable Work executed in accordance with the contract Documents before the effective date of termination, including a fair and reasonable amount for overhead and profit on such Work, less any prior payments for the Work. The determined value of the Work, including overhead and profit, shall be consistent with the Contract Documents, including any schedule of payments or schedule of values.
  - (2) For documented direct expenses sustained before the effective date of termination in performing services or furnishing labor, materials, or equipment as required by the Contract Documents necessary for the execution of the uncompleted Work. The determined value of the documented direct expenses, including overhead and profit, shall be consistent with the Contract Documents, including any schedule of payments or schedule of values.
  - (3) For reasonable and documented direct expenses, including damages, incurred in settlement or as a consequence of terminated subcontracts;
  - (4) For other actual expenses reasonably incurred as a direct consequence of the termination.
- (d) Notwithstanding the foregoing, Contractor shall not be entitled to recover any loss of anticipated profit or revenue or other economic loss arising out of or resulting from the termination, including without limitation any claim for anticipated profits on the Work not performed or lost business opportunity.
- (e) If the Contractor is terminated under this Section, the District may purchase from the Contractor all consumable supplies of the Contractor on hand, or in transit, or on definite commitment, including fuel, lubricants, and materials of construction not incorporated in the Work which, in the opinion of the District Representative, are suitable and required to complete the Work; and the District shall pay to the Contractor for such consumable supplies the prices paid therefore by the Contractor.
- (f) If the Contractor is terminated under this Section, upon request by the District Representative, the Contractor shall provide the District Representative with an itemized inventory and cost account of all plant, tools, equipment, labor and consumable supplies that have been used, are then in use, and were planned to be used on the Work. Further, upon request, the District shall have the right to audit all of the Contractor's records relating to costs incurred or planned to be incurred in performing the Work.

31. Authority to Execute this Contract: The person or persons executing this Contract on behalf of Contractor warrants and represents that he/she has the authority to execute this Contract on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

32. Representations: The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Contract or any representations inducing the execution and delivery hereof except such representations as are specifically set forth herein; and each party acknowledges that it has relied on its own judgment in entering into this Contract. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with its dealings with the other.

33. Notices: Any notice or instrument required to be given or delivered by this contract may be given by depositing the same in any United States Post Office, registered or certified, postage prepaid, address to:

To District:  
Attn: Executive Officer  
Humboldt Bay Harbor, Recreation, and Conservation District  
PO Box 1030  
Eureka Ca 95502

To Contractor: \_\_\_\_\_

34. Assignment: Contractor shall not assign this contract or payments under this contract. Contractor and each subcontractor hereby assign to the District rights, title, and interest in and to causes of action under Section 4 of the Clayton Act (15 U.S.C.A. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700 of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials for this contract or the subcontract. This assignment shall be made and become effective without further acknowledgement by the parties at the time District tender's final payment to Contractor.

35. Amendment: No waiver or modification of this Contract shall be valid unless agreed upon and signed by both the District and Contractor.

36. Nondiscrimination: Contractor shall ensure equal employment opportunity for all persons, regardless of race, color, religion, sex, creed, national origin, ancestry, age, medical condition, physical or mental disability, Vietnam-era veteran or special disabled veteran status, marital status or citizenship, within the limits imposed by law. These principles are to be applied by Contractor in all employment practices including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations. Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans With Disabilities Act of 1990, and any other applicable federal and state laws and regulations pertaining to nondiscrimination.

37. Uncontrollable Circumstances:

- (a) Upon Contractor's written request and submission of substantiating documentation of a delay resulting from an Uncontrollable Circumstance, the District Representative shall give Contractor a non-compensable extension of time. Contractor shall submit a written request within seven days of the commencement of the Uncontrolled Circumstance.
- (b) Prior to completion and acceptance of the Work, Contractor is responsible for, and bears the risk of loss associated with, damage or loss to any portion of the Work regardless of the cause, except

that Contractor may request an extension of any required Completion Date specified, as set forth in Section 36(a). Contractor shall repair or replace such damages or destroyed Work to its prior undamaged condition before being entitled to additional progress payments or final payment. Total or partial destruction or damage shall not excuse Contractor from completion of Work.

- (c) “Uncontrollable Circumstance” means any act, event or condition that is:
  - (1) beyond the reasonable control of the Contractor that justifies Contractor not timely performing an obligation or complying with any condition required under the contract documents, and
  - (2) materially expands the scope of, interferes with, or delays the Contractor’s performance of obligations under the contract documents, but only if such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of the contract documents on the part of the Contractor.
- (d) Examples of acts, events or conditions that typically qualify as uncontrollable circumstances include: naturally occurring events such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics, and extreme weather that threatens worker safety, property and/or project integrity in Contractor’s sole determination; explosions, terrorism, sabotage, or similar acts of a declared public enemy; extortion; war; blockade; insurrection, riot or civil disturbance; labor disputes, except labor disputes involving employees of the Contractor, its affiliates, or subcontractors, vendors and suppliers; the failure of any subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute an uncontrollable circumstance if it affected Contractor directly, and Contractor is not able after exercising all reasonable efforts to timely obtain substitutes; the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a government agency in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Work.
- (e) Examples of acts, events or conditions that do not typically qualify as an uncontrollable circumstances include: weather conditions normal for the area where the Work is being performed; any delay that would not have occurred but for the Contractor’s failure to comply with its obligations under the contract documents; Contractor’s inability to obtain timely materials or equipment; any work related injuries, accidents or safety violations; any changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions that significantly increase Contractor’s cost of performing the Work; any change in the financial condition of the Contractor or any subcontractor affecting their ability to perform timely their respective obligations; the consequences of error, neglect or omissions by the Contractor, any subcontractor, or any other person in the performance of the Work; any change of union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed on the Work or otherwise increasing the cost to the Contractor of performing the Work; inclement weather conditions normal for the area where the Work is being performed; any mechanical failure of equipment; or any electric utility power outages except as a direct result of an independent uncontrollable circumstance.

38. Extra, Changed Work:

- (a) The District may require changes in, additions to, or deductions from the Work to be performed or to the materials to be furnished under this contract. No extra work shall be performed or change made except pursuant to a written order from the District stating the extra work or change is authorized, and setting forth the basis upon which payment is to be made. No claim for additional compensation shall be valid unless pursuant to such a change order. Nothing in this section shall excuse the Contractor from proceeding with the prosecution of the changed work. When required by the District, the Contractor shall furnish an itemized breakdown of the quantities and prices used in computing the value of any ordered change.
- (b) Adjustments in the amounts to be paid to the Contractor by reason of any such change, addition or deduction shall be determined by one or more of the following methods:
  - (1) By an acceptable lump sum proposal from the Contractor.
  - (2) By unit prices contained in the Contractor's original bid and incorporated in the contract documents or fixed by subsequent agreement between the District and the Contractor.
  - (3) By ordering the Contractor to proceed with the work and to furnish daily reports of extra work. The reports shall itemize all costs for labor, material, and equipment rental. The reports for workers shall include hours worked, rates of pay, names and classification; and for equipment shall include size, type, identification number and hours of operation. Records and reports shall be made immediately available to the District Representative upon his request.
- (c) When the District orders extra work and there is an agreement between the District and the Contractor to perform the extra work, the District may approve the method used by the Contractor to accomplish the work. At the request of the District, the method to be used shall be memorialized in writing prior to work being performed.

39. Governing Law and Venue: This Contract and performance hereunder and all suits and special proceedings shall be construed in accordance with the laws of the State of California. If any action is brought to enforce the terms of this contract it shall be brought in Humboldt County Superior Court.

40. Attorney's Fees: Should any litigation or arbitration be commenced between the parties hereto concerning this contract, 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.

This Contract contains the sole and entire agreement between the parties. It supersedes any and all other agreements between the parties.

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

**DISTRICT:**

By: Larry Oetker  
Executive Director

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

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

Board of Commissioners, Board President

Signature \_\_\_\_\_

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

Approval as to form:  
Paul Brisso

Signature \_\_\_\_\_

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

**CONTRACTOR:**

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

By: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

**(CONTRACT AGREEMENT PACKAGE)**

(Attach completed Contractor's "Certificate of Insurance" to this page)

<b>CERTIFICATE OF INSURANCE</b> <b>THE HUMBOLDT BAY HARBOR, RECREATION &amp; CONSERVATION DISTRICT, CALIFORNIA</b>					ISSUE DATE (MM/DD/YY)									
<b>PRODUCER</b>			THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.  INSURERS AFFORDING COVERAGE: _____ BEST'S RATING _____  INSURER A: _____  INSURER B: _____  INSURER C: _____  INSURER D: _____  INSURER E: _____											
<b>INSURED</b>			INSURER B: _____  INSURER C: _____  INSURER D: _____  INSURER E: _____											
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.														
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXP. DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS									
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCURRENCE <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT. <input type="checkbox"/> OTHER				EACH OCCURRENCE \$ _____  DAMAGE TO RENTED PREMISES (Ea occurrence) \$ _____  MED. EXP. (Any one person) \$ _____  PERSONAL & ADV INJURY \$ _____  GENERAL AGGREGATE \$ _____  PRODUCTS COMP/OP AGG. \$ _____									
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$ _____  BODILY INJURY (Per person) \$ _____  BODILY INJURY (Per accident) \$ _____  PROPERTY DAMAGE \$ _____									
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCURRENCE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION				EACH OCCURRENCE \$ _____  AGGREGATE \$ _____									
	<b>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICERS/MEMBER EXCLUDED?  If yes, describe under SPECIAL PROVISIONS below.				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">WC STATUTORY LIMITS</td> <td style="width: 40%;">OTHER</td> </tr> <tr> <td colspan="2">EACH ACCIDENT</td> </tr> <tr> <td colspan="2">DISEASE-POLICY LIMIT</td> </tr> <tr> <td colspan="2">DISEASE-EACH EMPLOYEE</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	EACH ACCIDENT		DISEASE-POLICY LIMIT		DISEASE-EACH EMPLOYEE		
WC STATUTORY LIMITS	OTHER													
EACH ACCIDENT														
DISEASE-POLICY LIMIT														
DISEASE-EACH EMPLOYEE														
	<b>PROPERTY INSURANCE</b> <input type="checkbox"/> COURSE OF CONSTRUCTION				AMOUNT OF INSURANCE \$ _____									
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS														
<b>THE FOLLOWING PROVISIONS APPLY:</b> 1. None of the above-described policies will be canceled until after 30 days' written notice has been given to the District at the address indicated below. 2. The District, its officials, officers, employees, and volunteers are added as insureds on all liability insurance policies listed above. 3. It is agreed that any insurance or self-insurance maintained by the District will apply in excess of and not contribute with the insurance described above. 4. The District is named a loss payee on the property insurance policy listed above, if any. 5. All rights of subrogation under the property insurance policy listed above have been waived against the District. 6. The workers' compensation insurer named above, if any, agrees to waive all rights of subrogation against the District for injuries to employees of the insured resulting from work for the District or use of the District's premises or facilities.														
<b>CERTIFICATE HOLDER/ADDITIONAL INSURED</b> <b>The Humboldt Bay Harbor, Recreation &amp; Conservation District, 601 Startare Drive, Eureka, CA 95501</b>				<b>AUTHORIZED REPRESENTATIVE</b>  SIGNATURE _____  TITLE _____  PHONE NO. _____										

Rev. 6/08

**(CONTRACT AGREEMENT PACKAGE)**

(Attach completed Contractor's "Commercial General Liability Endorsement" to this page.)

INSURER:  
POLICY NUMBER:  
ENDORSEMENT NUMBER:

ISO FORM CG 20 10 22 85: (MODIFIED)  
COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY**

**ADDITIONAL INSURED – OWNERS, LESSEES, OR  
CONTRACTORS (FORM B)**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**SCHEDULE**

**NAME OF ORGANIZATION:**

**HUMBOLDT BAY HARBOR, RECREATION & CONSERVATION DISTRICT**  
**601 Startare Drive, Eureka, California 95501**

**WHO IS AN INSURED** (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Modifications to ISO form CG 20 10 11 85:

1. The insured scheduled above includes the Insured's officers, officials, employees, and volunteers.
2. This insurance shall be primary as respects the insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the District.

\_\_\_\_\_  
Signature-Authorized Representative

\_\_\_\_\_  
Address

CG 20 10 11 85 Insurance Services Office, Inc. Form (Modified)



(Attach completed Contractor's "Automobile Liability Special Endorsement" to this page.)

REV. 2/08



**(CONTRACT AGREEMENT PACKAGE)**

**PERFORMANCE BOND**

WHEREAS, the Humboldt Bay Harbor, Recreation and Conservation District, County of Humboldt, State of California, by motion passed \_\_\_\_\_, 20 \_\_\_\_, has awarded to \_\_\_\_\_

\_\_\_\_\_ hereinafter designated as the "Principal," a contract for constructing

**Humboldt Bay Piling Removal Project**

AND WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract,

NOW THEREFORE, we,

\_\_\_\_\_  
as Principal, and \_\_\_\_\_,  
as Surety, are held and firmly bound unto the Humboldt Bay Harbor, Recreation and Conservation District, California, hereinafter called the "District," to the penal sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
lawful money of the United States of America, for which sum well and duly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the hereby bounded Principal, his or its heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said contract and any alteration thereof, made as therein provided, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

FURTHER, THE SAID SURETY, FOR VALUE RECEIVED, HEREBY STIPULATES AND AGREES that no change, extension of time, or alteration or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or modification of the Contract Documents or of work to be performed thereunder.

**(CONTRACT AGREEMENT PACKAGE)**

IN WITNESS WHEREOF five (5) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety herein named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address of Surety

**(CONTRACT AGREEMENT PACKAGE)**

**LABOR AND MATERIAL BOND**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Humboldt Bay Harbor, Recreation and Conservation District, County of Humboldt, State of California, by motion passed \_\_\_\_\_, 20 \_\_\_\_, has awarded to

\_\_\_\_\_ hereinafter designated as the "Principal," a contract for constructing

**Humboldt Bay Piling Removal Project**

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, providing that if said Principal, or any of his or its subcontractors, shall fail to pay for any materials, provisions, provender, or other supplies or teams used in, upon, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth;

NOW THEREFOR, we, \_\_\_\_\_ ,

as Principal, and \_\_\_\_\_ ,  
as Surety, are held and firmly bound unto the Humboldt Bay Harbor, Recreation and Conservation District, California, hereinafter called the "District," to the penal sum of

\_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns shall fail to pay any of the persons named in Section 3181 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor as required by Section 3247 et seq. of the Civil Code of California, then said Surety will pay for the same, in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond such reasonable attorney's fees, as shall be fixed by the court, awarded and taxed as in the above-mentioned statutes provided.

**(CONTRACT AGREEMENT PACKAGE)**

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, or alteration or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, or alteration or modification of the Contract Documents or of work to be performed thereunder.

IN WITNESS WHEREOF five (5) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety

herein named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address of Surety

**(CONTRACT AGREEMENT PACKAGE)**

**GUARANTY BOND**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the Humboldt Bay Harbor, Recreation and Conservation District, County of Humboldt, State of California, by motion passed \_\_\_\_\_, 20 \_\_, has awarded to

\_\_\_\_\_,  
hereinafter designated as the "Principal," a contract for constructing

**Humboldt Bay Piling Removal Project**

AND WHEREAS, said Principal is required under the terms of said contract to furnish a bond for correction of deficiencies during the specified guaranty period;

NOW THEREFORE, we,

\_\_\_\_\_ ,

as Principal, and \_\_\_\_\_ , as Surety,  
are held and firmly bound unto the Humboldt Bay Harbor, Recreation and Conservation District, California,  
hereinafter called the "District," to the penal sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

lawful money of the United States of America, for which sum well and duly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the hereby bounded Principal, his or its heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the said guaranty of the contract, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and virtue.

**(CONTRACT AGREEMENT PACKAGE)**

IN WITNESS WHEREOF five (5) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety

herein named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address of Surety



# **Marine Habitat Mitigation Plan**

# **A**

**Humboldt Bay Subtidal Mariculture Pre-Permitting Project**  
**Marine Habitat Mitigation Plan**  
**January 31, 2018**

**Introduction**

The Humboldt Bay Subtidal Mariculture Pre-permitting Project is being implemented by the Humboldt Bay Harbor, Recreation and Conservation District (District). This project will allow for development of subtidal mariculture operations in Humboldt Bay as described in the project's final Environmental Impact Report (SCH 2013062068) and conditioned by the project's regulatory approvals from the District, California Coastal Commission, North Coast Regional Water Quality Control Board and US Army Corps of Engineers. These conditions include the removal of 21 derelict piles. Removal of these piles will create new benthic habitat that will mitigate for habitat loss due to the project's placement of piles, anchors and other mooring devices. The California Coastal Commission staff report (#9-16-0204) requires submittal and approval of a plan describing the process for pile removal. Specifically, Condition 9 of the staff report states:

Marine Habitat Mitigation. PRIOR TO PERMIT ISSUANCE, the Harbor District shall submit, for Executive Director review and written approval, a Marine Habitat Mitigation Plan that clarifies the location, and removal method for the 21 derelict piles that are proposed to be removed to create new soft substrate benthic habitat as mitigation for the benthic habitat that would be lost to install the eight project piles and the additional benthic habitat that would be used to support the project anchors and mooring devices.

This Marine Habitat Management Plan is intended to satisfy this condition. Following is a description of pile removal methods and locations.

## Methods

Pile removal will be conducted from shore and/or from a barge. A 70 ton P&H truck crane with a 120' boom carrying a vibratory hammer and timber clamp will be used to remove the piles. Piles that break off above the bottom will be reattached to the vibratory hammer and removed. In the event that a pile cannot be fully extracted, an alternate pile within 100' will be removed. The removal operation is expected to take one or two days.

Removal with barge: The crane referenced above would be on a barge. The barge would be approximately 79' X 116' with a 4' draft and would be moved with a small tug boat. Removed piles would be placed on the barge and taken to either 14<sup>th</sup> street dock or Woody's dock in Humboldt Bay for unloading.

Removal from shore: The crane referenced above would operate from the road immediately adjacent to the bay. Removed piles would be placed on a truck and taken to Redwood Marine Terminal 2 for unloading.

The following best management practices (BMP) will be followed:

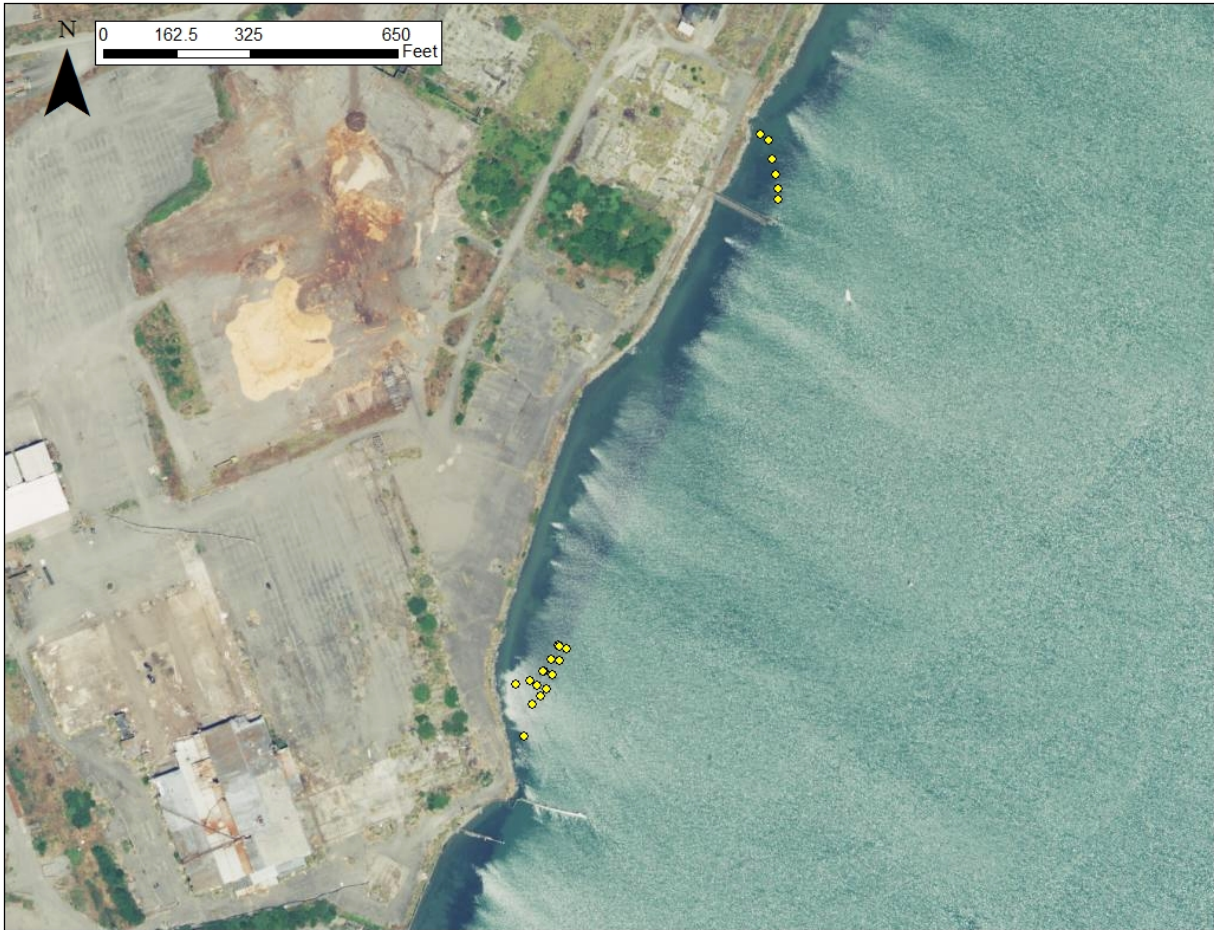
- A Harbor District staff or representative will be present to ensure that the correct piles are pulled and these BMPs are adhered to.
- Neither the barge nor the tug will anchor during the project. The barge may attach to existing piles in order to maintain its position.
- Piles will be removed at a tide of sufficient elevation to float the barge and tug boat adjacent to the piles being removed without scarring the mudflats or injuring eelgrass.
- Grounding of the barge will not be permitted.
- A floating containment boom will surround each pile being removed to collect any debris. To collect debris that floats below the surface but does not sink to the bottom, weighted plastic mesh (similar to orange construction fencing) will be attached to the boom and extended across the area surrounding the pile. If debris sinks to the bottom, then it will be removed by a diver.
- All equipment will be checked before use in order to minimize risk of petroleum product releasing to the bay. A spill response kit, including oil absorbent pads will be on-site to collect any petroleum product that is accidentally released.
- The crane and tug operators will be experienced with vibratory pile removal.
- The crane operator will break the soil/pile bond prior to pulling in order to limit pile breakage and sediment adhesion.
- Piles will be removed slowly to limit sediment disturbance.
- Piles will not be hosed off, scraped, or otherwise cleaned once they are removed from the sediment.
- Piles will be placed in a containment area on the barge to capture sediment attached to the piles.
- The containment area will not allow sediment or contaminated water to reenter the bay.
- Holes left in the sediment by the pilings will not be filled. They are expected to naturally fill.
- Piles and debris will be removed from the barge carefully and moved to a designated site for disposal preparation. Prior to disposal, the piles and debris will be stored in paved areas, covered with tarps and surrounded by a soil erosion boom in order to prevent potential leaching or discharge of debris or contaminated material.
- All removed piles or portions of piles will be disposed of at an authorized facility. No piles or portions of piles will be re-used in Humboldt Bay or along shoreline areas

Figures 1-6 show the location of the 21 piles proposed for removal and representative photos. The piles appear to be in relatively good condition (e.g., there are no signs of substantial rotting) and it's expected that they can be removed without breaking off. Table 1 presents the geographic coordinates of the piles. Upon completion of the pile removal activities, a report will be provided to California Coastal Commission staff describing the process. The report will describe the duration of pile removal activities, whether piles broke off and if so the replacement piles that were removed, pile transportation and storage, and other relevant details of the removal activities.



**Figure 1. Location of piles proposed for removal.**





**Figure 2. Twenty-one piles proposed for removal.**



**Figure 3. Northern set of piles proposed for removal.**





**Figure 4. Representative photos of northern set of piles proposed for removal.**



**Figure 5. Southern set of piles proposed for removal.**





**Figure 6. Representative photos of southern set of piles proposed for removal.**

**Table 1. Geographic coordinates of piles proposed for removal.**

<b>Pile ID</b>	<b>Latitude</b>	<b>Longitude</b>
1	40.811897	-124.186359
2	40.811860	-124.186292
3	40.811744	-124.186259
4	40.811652	-124.186233
5	40.811566	-124.186212
6	40.811504	-124.186208
7	40.808788	-124.186208
8	40.808780	-124.187903
9	40.808768	-124.187848
10	40.808706	-124.187967
11	40.808695	-124.187894
12	40.808628	-124.188028
13	40.808631	-124.188020
14	40.808613	-124.187949
15	40.808574	-124.188131
16	40.808546	-124.188076
17	40.808520	-124.187998
18	40.808548	-124.188244
19	40.808477	-124.188048
20	40.808429	-124.188109
21	40.808237	-124.188174

**California Coastal  
Commission Permit**

**B**

**CALIFORNIA COASTAL COMMISSION**

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION  
45 FREMONT STREET  
SUITE 2000  
PH (415) 904-5200 FAX (415) 904-5400  
WWW.COASTAL.CA.GOV

**RECEIVED**

FEB 05 2018

**H.B.H.R. & C.D.**

Page 1

January 31, 2018

Permit Application No.: 9-16-0204

**COASTAL DEVELOPMENT PERMIT**

On November 4, 2016, the California Coastal Commission granted to the **Humboldt Bay Harbor, Recreation & Conservation District** this permit subject to the attached Standard and Special Conditions, for development consisting of placement and operation of approximately three total acres of shellfish nursery rafts, floating upwelling systems (FLUPSYs), macroalgae cultivation longlines, and floating walkways across three areas of submerged lands with sizes between 6.0 and 8.6 acres, more specifically described in the application filed in the Commission offices.

The development is within the coastal zone in **Humboldt Bay** along the shoreline of the **Samoa Peninsula** near **Vance Ave.**

Issued on behalf of the California Coastal Commission by

Sincerely,

John Ainsworth  
Executive Director

A handwritten signature in black ink, appearing to read "Mark Delaplaine".

By: Mark Delaplaine  
Manager  
Energy, Ocean Resources, and Federal Consistency  
Division

**ACKNOWLEDGMENT:**

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

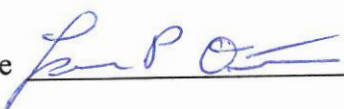
The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part of that: "A Public entity is not liable for injury caused by the issuance... of any permit..." applies to the issuance of this permit.

January 31, 2018

Permit Application No.: 9-16-0204

**COASTAL DEVELOPMENT PERMIT**

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date: February 8, 2018Signature **STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS:**

1. **Permit Term Limit.** This coastal development permit shall expire upon expiration of Humboldt Bay Harbor, Recreation, and Conservation District (Harbor District) Permit No. 13-03 but not later than February 25, 2026 (the maximum term provided for Harbor District Permit No. 13-03). Prior to this February 25, 2026 expiration date, the Harbor District may apply to the Commission for a permit amendment to extend the term of this permit for an additional ten year period if a new Harbor District permit is issued with a similar term. This permit amendment application shall include a report describing (1) the status of aquaculture operations within the three subtidal sites; (2) the consistency of these operations with all provisions and conditions included in their leases and the Harbor District's state and federal permits and authorizations; and (3) the current and projected level of demand for coastal-dependent industrial uses along the shoreline of Humboldt Bay and the land and infrastructure available to accommodate that demand. The information in this report shall be reviewed and an analysis of it provided to the

## COASTAL DEVELOPMENT PERMIT

Commission for consideration if an amendment application to extend this permit term is made. All individual leases for aquaculture activities within each of the subtidal sites shall be revoked by the Harbor District if this permit expires without replacement or an amendment to extend the permit term limit.

2. **Maintenance Cleaning.** All maintenance cleaning operations of the raft hulls, raft floats, and well infrastructure (not including floating upwelling system bins) within Subtidal Site 1, 2, and 3 shall be carried out onshore. All biofouling organisms and biological materials removed during these cleaning operations shall be collected and disposed of at an appropriate upland facility. Regular scraping of the floating upwelling system channels can occur on the rafts, provided that all biofouling organisms and biological materials are contained using tarps and/or screens. No discharge of untreated wash water or biofouling materials into Humboldt Bay shall occur during maintenance cleaning operations.
3. **Marine Wildlife.** If any marine mammals or more than ten pelicans and/or cormorants at any one time are observed on one of the nursery rafts, cultivation rafts or FLUPSYs for more than two weeks, the Harbor District shall within 10 days notify the Executive Director and within 30 days of such notification to the Executive Director submit, for review and approval, a plan to install passive deterrent devices (such as exclusionary fencing or netting) to prevent future use of the rafts or FLUPSYs by marine mammals or seabirds. The Harbor District shall install or require relevant lessee(s) to install the passive deterrent devices and maintain them as approved by the Executive Director.
4. **Intake System Design.** Intake systems shall be limited to those on nursery rafts and floating upwelling systems and shall be designed with a screened intake with (a) round or square openings of no more than 3/32 inches or slotted/wedge wire openings of no more than 1.75 millimeters, a screen area of at least 5 square feet per cubic foot per second water volume intake, a minimum open area of 27%, and a maximum intake water approach velocity of 0.2 feet per second if a self-cleaning device is installed that clears the entire screen face at least once every five minutes; or (b) round or square openings of no more than 3/32 inches or slotted/wedge wire openings of no more than 1.75 millimeters, a screen area of at least 20 square feet per cubic foot per second water volume intake, a minimum open area of 27%, and a maximum intake water approach velocity of 0.05 feet per second if a self-cleaning device is not installed.
5. **Non-native Species Management.** All aquaculture operations within Subtidal Sites 1, 2, and 3 shall: (1) use screens during washdown of Manila clam seed and equipment to contain all clams regardless of size and prevent seed from falling into the bay; (2) remove all Manila clam seed from the nursery raft and FLUPSY system prior to reaching 12 millimeters shell size, at which size they are not sexually mature; (3) not discard culled shellfish into Humboldt Bay; and (4) be limited to the cultivation of Pacific oysters (*Crassostrea gigas*), Kumamoto oysters (*Crassostrea sikamea*), Manila clam seed (*Tapes philippinarum*), and native red algae such as *Chondracanthus*, *Gracilaria*, *Palmaria*, and *Porphyra* species. Culture of additional shellfish or algae species may be considered through an amendment to this permit.
6. **Pile Driving Marine Wildlife Precautions.**



## COASTAL DEVELOPMENT PERMIT

- (a) Pile driving shall only occur between July 1<sup>st</sup> and October 15<sup>th</sup>.
- (b) A marine mammal monitor approved by the Executive Director shall be present at all times during pile driving. The monitor shall ensure that the Harbor District and its contractors fully comply with the conditions of this permit related to biological protection during pile driving.
- (c) During pile driving of the initial five piles used for the Harbor District's acoustic testing, work that causes elevated levels of underwater sound shall be suspended if any marine mammal is observed within or approaching 500 meters of the work site. For the first two piles, this 500 meter wide area surrounding the work site shall be the Hazard Zone. Pile driving may resume once the mammal is observed outside of this Hazard Zone or more than 30 minutes have elapsed since the last sighting of the marine mammal within the Hazard Zone. After the initial two piles, the width of the Hazard Zone shall be determined based on the results of hydroacoustic monitoring showing the maximum distance from the work site at which the recorded peak sound pressure level (SPL) exceeds 196 dB<sup>1</sup> re 1  $\mu$ Pa or the calculated cumulative sound exposure level (SEL) exceeds 140 dB re 1  $\mu$ Pa<sup>2</sup> - sec. The marine mammal monitor will be responsible for monitoring this Hazard Zone during pile driving activities. In the event that the monitor determines a marine mammal has entered this zone, the monitor shall have the authority to suspend pile-driving activities until the marine mammal has passed outside of this Hazard Zone or more than 30 minutes have elapsed since the last sighting of the marine mammal within the Hazard Zone.
- (d) An initial ramp-up period shall occur when starting pile-driving activities to avoid potential impacts to marine mammals that may be undetected within the Hazard Zone.
- (e) The pile driver shall be operated at its lowest practicable power setting and shall employ the use of sound dampening techniques and/or devices (such as pile cushions or caps) if such techniques and/or devices can be safely used without interfering with effective operations.

### 7. Underwater Acoustic Monitoring.

- (a) Underwater hydroacoustic monitoring shall be carried out during the first two pile driving events to determine the maximum distance from the work site at which the recorded peak sound pressure level (SPL) exceeds 196 dB re 1  $\mu$ Pa or the calculated cumulative sound exposure level (SEL) exceeds 140 dB re 1  $\mu$ Pa<sup>2</sup> - sec, the underwater acoustic threshold levels for high frequency cetaceans such as harbor porpoise specified in the National Marine Fisheries Service's July 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing. These first five piles shall be selected to be representative of the conditions at the site of the eight proposed piles (water depths, substrate types, etc.) and the hydroacoustic monitoring stations shall start as close as practicable to the site of active pile driving and extend outward at increasing distances to the edge of the initial Hazard Zone. Prior to the initiation of pile driving activities for the sixth pile, the results of the hydroacoustic monitoring of the initial five piles and the resulting recommended size of the Hazard Zone shall be provided to the Executive Director for review and approval.
- (b) To prevent adverse impacts to fish from elevated levels of underwater sound associated with pile driving, an underwater acoustic monitoring device capable of recording both peak and accumulated sound pressure levels shall be placed as close as practicable to the site of active

<sup>1</sup> Decibel (dB) references in this report are for underwater sound and use the water (not air) standard (i.e., re 1  $\mu$ Pa).

## COASTAL DEVELOPMENT PERMIT

pile driving. The data collected by this device shall be monitored throughout the course of pile driving operations.

- (c) As specified in the interagency Fisheries Hydroacoustic Working Group June 12, 2008, memorandum, pile driving activity shall immediately cease if at any time: (a) the recorded peak sound pressure level exceeds 206 dB re 1  $\mu$ Pa; or (b) the calculated cumulative sound exposure level (SEL) exceeds 183 dB re 1  $\mu$ Pa<sup>2</sup> - sec.
  - (d) If the cumulative sound exposure level threshold is exceeded, pile driving shall cease for as long as possible without risking sediment consolidation and not less than 30 minutes.
  - (e) If the peak sound pressure level threshold is exceeded and/or if the marine mammal monitor observes dead or injured fish in the vicinity of active pile driving operations, the Harbor District shall implement additional feasible power reduction and/or sound dampening measures necessary to reduce the peak sound pressure level below the threshold.
  - (f) Peak sound pressure and cumulative SEL data from the first two of the eight piles shall be compiled and submitted to the Executive Director within 14 days of the completion of pile driving activities on the fifth pile. If this data demonstrates that neither the peak sound pressure nor accumulated SEL thresholds specified in part (c) above were exceeded, the remaining replacement piles may be installed without underwater acoustic monitoring.
8. **Eelgrass Protection.** Prior to the initiation of installation activities for aquaculture gear or mooring piles, the Harbor District shall submit for Executive Director review and approval a plan showing that all such activities and associated structures or infrastructure (including pilings, moorings, anchors, longlines, surface rafts, FLUPSYs) shall remain a minimum of 30-feet away from the outside edge of any eelgrass bed within or adjacent to the three subtidal aquaculture sites. This report shall include a map of all eelgrass within each subtidal site and a 50-foot perimeter outside. The map shall be based on the results of an eelgrass survey carried out consistent with the timing and methodology guidelines of the National Marine Fisheries Service's California Eelgrass Management Program. Areas with depths greater than twice the minimum expected eelgrass growing depth in Humboldt Bay are exempt from this survey requirement.
9. **Marine Habitat Mitigation.** PRIOR TO PERMIT ISSUANCE, the Harbor District shall submit, for Executive Director review and written approval, a Marine Habitat Mitigation Plan that clarifies the location, and removal method for the 21 derelict piles that are proposed to be removed to create new soft substrate benthic habitat as mitigation for the benthic habitat that would be lost to install the eight project piles and the additional benthic habitat that would be used to support the project anchors and mooring devices.
10. **Clean-up and Abandonment.** Within 90 days of the expiration or revocation of any lease for aquaculture operations within the three subtidal aquaculture sites, the Harbor District shall submit either a report demonstrating that all cultivation gear, equipment, and material associated with that lease has been removed, or a coastal development permit application for the complete collection and removal of all remaining cultivation gear, equipment, and material associated with that lease. Upon issuance of that coastal development permit, the Harbor District shall implement approved removal and collection operations within 90 days.



## COASTAL DEVELOPMENT PERMIT

### 11. Marine Debris Prevention and Response.

- (a) To the extent practicable, all aquaculture structures and pieces of gear and equipment shall be labeled with the name of the individual or business responsible for its use and installation.
- (b) All practical efforts shall be made to avoid the loss or displacement of these materials during aquaculture operations and to quickly recover any and all material that becomes lost or displaced. Lost or displaced material that is not recovered shall be documented by the Harbor District during lease inspections along with recommendations on how to avoid similar losses in the future. Continual improvement to gear design and practices shall take place to reduce loss of gear over time.
- (c) The Harbor District shall carry out lease inspections as soon as practicable after large storm, seismic, tsunami, or wind events and expedite recovery and clean-up operations for storm related losses of equipment and material.
- (d) The Harbor District shall collect data on where and what kind of loose gear or debris they find during inspections and share it with lessees and interested parties so that clean-up efforts by growers and outside parties can be more effectively carried out and efforts to better design gear to minimize loss can be pursued.
- (e) All leases in Subtidal Sites 1, 2, and 3 and equipment within them shall be maintained in good working condition.
- (f) Waste or loose material or equipment shall not be stored onsite, including tools or materials not in active use to grow shellfish, food items or water bottles.
- (g) Work barges, skiffs, or other vessels servicing the floating or submerged aquaculture structures shall not be stored, anchored, or moored overnight within the subtidal aquaculture sites.
- (h) No construction activities or maintenance requiring construction activities shall occur on the Subtidal Sites 1, 2, or 3 or the lease areas within them.

12. **Compliance and Status Reporting.** By January 31 of each year, the Harbor District shall provide, for Executive Director review and written approval, an Annual Compliance and Status Report (Annual Report) for all active leases. This Annual Report shall include all lease status and lease inspection reports developed or received by the Harbor District during the previous year as well as a summary of the as-built conditions and production levels for each of the three subtidal aquaculture sites that includes, at a minimum, the surface area and volume of aquaculture structures and equipment, the type and size of anchoring or mooring structures, and the biomass of cultured organisms.

13. **Other Agency Review and Approval.** PRIOR TO COMMENCEMENT OF PROJECT CONSTRUCTION AND/OR INSTALLATION ACTIVITIES, the Harbor District shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted, including those from the North Coast Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally necessary.

**US Army Corps of  
Engineers Permit**

**C**



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103-1398

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Humboldt Bay Harbor, Recreation and Conservation District, 601 Startare Drive, Eureka, CA 95501

PERMIT NO.: 2016-00401N

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

**PROJECT DESCRIPTION:** The project includes placement of a total of 3.08 acres of shellfish and macroalgae aquaculture structures, within three areas of submerged subtidal lands totaling 21.2 acres in the Central Bay of Humboldt Bay, near the City of Eureka, Humboldt County, California. The three project areas are 6 acres, 6.6 acres and 8.6 acres in size and will support a maximum of 0.87 acres, 0.96 acres, and 1.25 acres of aquaculture activities, respectively. This infrastructure will be used for Humboldt Bay Harbor District (Harbor District) leases to individuals or businesses to carry out aquaculture activities. Aquaculture activities within each project area will include installation and operation of two types of floating shellfish aquaculture structures and one type of submerged algae cultivation structure. All of these structures will be constructed offsite and towed to their installation sites for mooring.

The shellfish structures to be installed by lessees will be floating upwelling systems ("FLUPSYs") for growing young shellfish; and "nursery rafts" for growing small, immature shellfish that will be sold or transferred elsewhere for grow-out to consumer sizes. The algae cultivation structures will be submerged "longlines" held in the water column by anchors on the seafloor and buoys at the surface. Floating walkways and mooring systems will also be installed and used to facilitate aquaculture operations. Shellfish species proposed to be cultivated on these structures will be limited to Pacific oysters (*Crassostrea gigas*), Kumamoto oysters (*Crassostrea sikamea*), and Manila clams (*Tapes philippinarum*). Cultivated macroalgae will be limited to native red algae such as *Chondracanthus*, *Gracilaria*, *Palmaria*, and *Porphyra* species.

Maximum thresholds for the size and intensity of aquaculture activities have been set within the three project areas. For the three project areas, the combined maximum thresholds per acre will be 6,322 square feet of aquaculture operations; 19,357 cubic feet of aquaculture equipment in the water column; 102 square feet of structures (footprint of piles, anchors and mooring systems); and 216 pounds (dry weight) of cultured shellfish biomass. The maximum threshold for each project area – based on its acreage – is shown in the table below.

Site Name	Size of Site (acres)	Surface Area of Aquaculture (ft <sup>2</sup> /acre)	Volume of Aquaculture (ft <sup>3</sup> )	Fill/Mooring Footprint (ft <sup>2</sup> )	Shellfish Biomass (lbs – dry weight)
Subtidal 1	6.6	41,752/0.96	127,756	673	1426
Subtidal 2	8.6	54,370/1.25	166,472	878	1859
Subtidal 3	6.0	37,932/0.87	116,142	612	1296
TOTAL	21.2	134,054/3.08	410,370	2,163	4,581

The total amount of water surface area allowed by these combined structures is 41,752 square feet (0.96 acres) at Subtidal Site 1, 54,370 square feet (1.25 acres) at Subtidal Site 2, and 37,054 square feet (0.87 acres) at Subtidal Site 3 for a combined total of approximately 3.08 acres. The structures installed under this threshold will be connected to the existing or proposed piling, pier, or wharf within each of the three project areas by way of floating gangways, cables, and chains. The nursery rafts, FLUPSYs, and macroalgae longlines are expected to be placed in Humboldt Bay as one or more joined floating structures. The maximum size for each joined structure will be 10,000 square feet and any single or joined structure of that size will have a buffer around it of at least ten feet of open surface water. Walkways may be located

between structures but will be limited to no more than three feet in width and will be grated to allow light penetration of at least 50%.

To facilitate the mooring of aquaculture structures within Subtidal Site 3, the Harbor District will install up to eight 12-inch diameter steel or concrete piles. These piles will be installed in the deeper waters of this project site and will be configured to provide maximum mooring space. Installation of the piles will be carried out using either vibratory installation methods (using a machine that vibrates the pile at high speeds to liquefy the adjacent substrate while simultaneously applying downward pressure) or a more traditional impact pile driver. To help ensure that piling installation activities do not adversely affect marine wildlife as a result of elevated levels of underwater noise, the Harbor District shall employ a marine wildlife monitor to install hydroacoustic monitoring equipment during the first five pile driving events to determine the sound levels being generated and the appropriate monitoring distances, and to implement maximum underwater sound threshold levels for both marine mammals and special status fish species. Additionally, the Harbor District shall remove 21 existing derelict piles to provide mitigation for impacts to benthic substrate habitat. Six existing 12-inch diameter piles will be removed from subtidal site 1, and 15 12-inch diameter piles will be removed from subtidal site 2. The piles will be removed by barge and crane.

All work shall be completed in accordance with the plans and drawings titled "USACE File #2016-00401N, Humboldt Bay Mariculture Pre-Permitting Project – Project Description Subtidal Leases", dated February 2017, in 15 pages provided as enclosure 1 and will adhere to all minimization measures and conservation recommendations as described in the U.S. Fish and Wildlife Service and National Marine Fisheries Service Letters of Concurrence (enclosures 2 and 3).

The Harbor District is responsible for ensuring that all authorized work done by their personnel or within the project area is addressed and completed in accordance with the terms and conditions of this permit. Any lessee working under this permit is responsible for ensuring that all work they or their contractors undertake is in accordance with the terms and conditions of this permit. The Harbor District is responsible for providing appropriate guidance to the lessee and the required annual reports to the Corps. However, the Corps is the authority on determining if an activity is authorized by this permit.

**PROJECT LOCATION:** Central Humboldt Bay, City of Eureka, Humboldt County, California

**PERMIT CONDITIONS:**

**GENERAL CONDITIONS:**

1. The time limit for completing the work authorized ends on October 31, 2022. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**SPECIAL CONDITIONS:**

1. The Harbor District will provide to the Corps copies of all new aquaculture leases with a location map, a summary of the surface area affected, and proposed work plan for each new lessee within one week of signing the lease. New work may not commence until the Corps has confirmed receipt of the lease information.
2. The Harbor District will provide an annual compliance report by December 31 of each year that details all structures installed in jurisdictional waters, active lease sites and any lessee changes. The report will describe actions taken to avoid adverse effects to listed species and provide photo documentation of current site conditions.
3. If a lessee does not carry out work in compliance with project design standards and specifications, including the previously agreed upon terms and conditions, the Harbor District will notify the lessee and work directly with them to resolve the problem. If the lessee still fails to comply, the Harbor District will notify the lessee that their activities are no longer covered by the Pre-permitting Program's permit and agreements. The lessee will then be responsible for obtaining regulatory review and individual permits from the appropriate regulatory agencies and will be held liable for all violations. The Harbor District will notify the Corps of any projects that are no longer covered under the Pre-permitting Program's permit.
4. The USFWS and NMFS concurred with the determination that the project was not likely to adversely affect tidewater goby (*Eucyclogobius newberryi*), coastal cutthroat trout (*Oncorhynchus clarkii clarkia*), coho salmon (*O. kisutch*), steelhead (*O. mykiss*), Chinook salmon (*O. tshawytscha*), longfin smelt (*Spirinchus thaleichthys*), green sturgeon (*Acipenser medirostris*) and eulachon (*Thaleichthys pacificus*) and designated critical habitat for these species. This concurrence was premised, in part, on project work restrictions outlined in enclosure(s) 2 and 3. These work restrictions are incorporated as special conditions to this authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
5. A post construction report shall be submitted 45 days after the conclusion of construction activities for the mooring facilities and pile removal. The report shall document construction activities and contain as-built drawings (if different from drawings submitted with application) and include before and after photographs.
6. Removal of the 21 pilings identified for mitigation will occur only at high tides (preferably tides exceeding 4.0 feet) so that any likelihood of prop wash or prop scarring effects to eelgrass are avoided.

**FURTHER INFORMATION:**


1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - (X ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
  - ( ) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

- b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

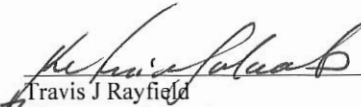
6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
\_\_\_\_\_  
(PERMITTEE)  
Mr. George Williamson  
Humboldt Bay Harbor, Recreation and Conservation District

11-13-2017  
\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
\_\_\_\_\_  
Travis J Rayfield  
Lieutenant Colonel, U.S. Army  
District Commander

27 November 2017  
\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)

## PROJECT STATUS

Please use the forms below to report the dates when you start and finish the work authorized by the enclosed permit. Also if you suspend work for an extended period of time, use the forms below to report the dates you suspended and resumed work. The second copy is provided for your records. If you find that you cannot complete the work within the time granted by the permit, please apply for a time extension at least one month before your permit expires. If you materially change the plan or scope of the work, it will be necessary for you to submit new drawings and a request for a modification of your permit.

(cut as needed) -----

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

**NOTICE OF COMPLETION OF WORK** under Department of the Army Permit No. 2016-00401N

**TO:** District Engineer, US Army Corps of Engineers, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, CA 94103-1398

In compliance with the conditions of Permit No. 2016-00401N, this is to notify you that work was completed on

\_\_\_\_\_  
Permittee: Humboldt Bay Harbor, Recreation and Conservation District, Attn: George Williamson

Address: PO Box 1030 Eureka, California 95502-1030

(cut as needed) -----

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

**NOTICE OF RESUMPTION OF WORK** under Department of the Army Permit No. 2016-00401N

**TO:** District Engineer, US Army Corps of Engineers, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, CA 94103-1398

In compliance with the conditions of Permit No. 2016-00401N, this is to notify you that work was completed on

\_\_\_\_\_  
Permittee: Humboldt Bay Harbor, Recreation and Conservation District, Attn: George Williamson

Address: PO Box 1030 Eureka, California 95502-1030

(cut as needed) -----

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

**NOTICE OF SUSPENSION OF WORK** under Department of the Army Permit No. 2016-00401N

**TO:** District Engineer, US Army Corps of Engineers, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, CA 94103-1398

In compliance with the conditions of Permit No. 2016-00401N, this is to notify you that work was completed on

\_\_\_\_\_  
Permittee: Humboldt Bay Harbor, Recreation and Conservation District, Attn: George Williamson

Address: PO Box 1030 Eureka, California 95502-1030

(cut as needed) -----

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

**NOTICE OF COMMENCEMENT OF WORK** under Department of the Army Permit No. 2016-00401N

**TO:** District Engineer, US Army Corps of Engineers, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, CA 94103-1398

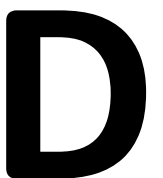
In compliance with the conditions of Permit No. 2016-00401N, this is to notify you that work was completed on

\_\_\_\_\_  
Permittee: Humboldt Bay Harbor, Recreation and Conservation District, Attn: George Williamson

Address: PO Box 1030 Eureka, California, 95502-1030



**Water Quality Control  
Board Certification**



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## North Coast Regional Water Quality Control Board

March 6, 2017

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**In the Matter of**  
  
**Water Quality Certification**  
  
**for the**  
  
**Humboldt Bay Mariculture Pre-Permitting Project**

APPLICANT:	Humboldt Bay Harbor, Recreation and Conservation District
RECEIVING WATER:	Humboldt Bay
HYDROLOGIC UNIT:	Eureka Plain Hydrologic Unit, No. 110.00
COUNTY:	Humboldt
Files:	Humboldt Bay Mariculture Pre-Permitting Project; ECM PIN CW-822183, WDID No. 1B16123WNHU

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### FINDINGS BY THE EXECUTIVE OFFICER:

1. On February 12, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the Humboldt Bay Harbor, Recreation and Conservation District (Applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification (certification) for activities related to the proposed Humboldt Bay Mariculture Pre-Permitting Project (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on January 10, 2017. No comments were received.
3. **Receiving Waters:** The proposed Project will cause disturbances to three discrete locations within Humboldt Bay.

4. **Project Description:** The purpose of the Project is to allow for an expansion of commercial aquaculture activities in Humboldt Bay, to create jobs and improve the local economy, and increase local and sustainable seafood production. The Applicant will secure the required regulatory Project permits for aquaculture activities and then grant leases to private shellfish growers for discrete, subtidal portions of the Project's pre-permitted sites.

The Applicant shall ensure that all activities are compliant with Project permits through the use of leases. The leases will include:

- A map, a legal description of the leased area, and an allowance to conduct specific aquaculture activities within that area;
- All regulatory requirements subject to the aquaculture activities;
- A description of the mechanisms by which the Applicant would oversee aquaculture activities, including reporting by the lessee to the Applicant; and
- A description of the process by which the Applicant would address failures to meet lease requirements, including cancelling leases and requiring the removal of all aquaculture equipment.

Annual compliance reports shall be submitted to the Regional Water Board by January 31 of each year to document the Applicant's compliance with the permit terms and conditions.

Three general aquaculture methods will be employed: 1) Floating Upwelling Systems (i.e., "FLUPSYs") or pump systems for growing juvenile shellfish, moored by chain and line to a pier and adjacent twelve-inch pilings or anchored with concrete or steel anchors; 2) Shellfish nursery rafts, anchored to concrete anchors; and 3) Macroalgae longline, single, independent lines fixed by removable mooring points or anchors and supported by floats. Floating walkways and mooring systems will also be installed and used to support aquaculture operations.

The Applicant will establish aquaculture operations at three discrete locations, all on the inland side of the north spit in Samoa, as shown below in Figure 1.



Figure 1: Subtidal Culture Sites 1-3

Sites 1-3 will be placed as follows:

- Subtidal Culture Site 1—Approximately 6.6-acre area located between 40.8105, -124.187<sup>1</sup> to the south, and 40.814, -124.184 to the north (see Figure 2);

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<sup>1</sup> All geographic coordinates cited in this certification use WGS84 datum



Figure 2: Subtidal Site 1

- Subtidal Culture Site 2—Approximately 8.6-acre area located between 40.8067, -124.1882 to the south, and 40.8088, -124.1875 to the north(see Figure 3; and

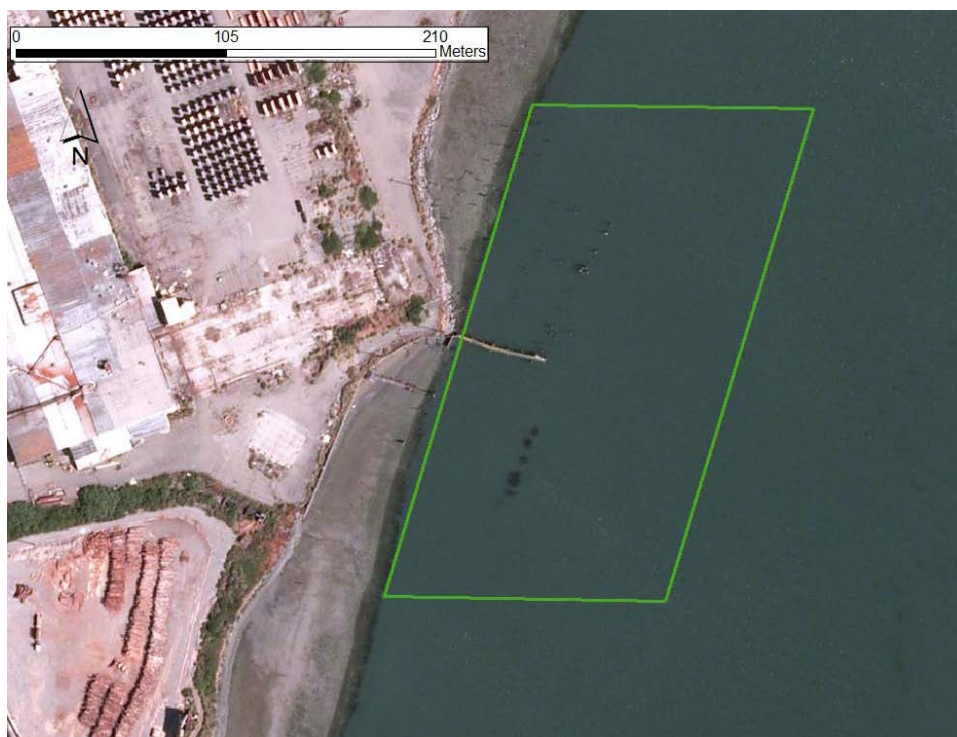


Figure 3: Subtidal Site 2



- Subtidal Culture Site 3—Approximately 6.0-acre area located between 40.80184, -124.190 to the south, and 40.8037, -124.1894 to the north (see Figure 4).



Figure 4: Subtidal Site 3

5. **Project Impacts:** Project implementation will result in approximately 6.5 square feet (0.00015 acres) of permanent fill of benthic habitat due to placement of eight 12-inch diameter piles. Project implementation will also result in approximately 2,162 square feet (0.050 acres) of temporary impacts to benthic habitat as a result of placing anchors and spud poles to support aquaculture apparatus.
6. **Mitigation for Project Impacts:** The Applicant shall remove 21 derelict pilings from Humboldt Bay as mitigation for Project permanent and temporary impacts.
7. **Avoidance and Minimization of Impacts:** The Applicant is proposing maximum impact thresholds at each of the three culture sites to avoid and minimize impacts to Humboldt Bay. The maximum allowable water surface area that could be in aquaculture production at culture sites 1, 2, and 3, will be 41,752 square feet (0.96 acres), 54,370 square feet (1.25 acres), and 37,932 square feet (0.87 acres), respectively. The maximum allowable volume of aquaculture equipment and cultured organisms at culture sites 1, 2, and 3, will be 127,756 cubic feet, 166,472 cubic feet, and 116,142 cubic feet, respectively. The allowable benthic footprint at culture sites 1, 2, and 3, would be 673 square feet, 878 square feet, and 612 square feet, respectively. The allowable shellfish biomass at culture sites 1, 2, and 3, would be 647 dry weight kilograms, 843 dry weight kilograms, and 588 dry weight kilograms, respectively.

The Applicant shall include a ten foot wide gap or buffer between each contiguous 10,000 square feet of aquaculture structures, as well as perform all maintenance cleaning of the raft hulls, raft floats, and well infrastructure (excluding FLUPSY's) at onshore locations. Pile driving shall occur only between July 1 and October 15 and hydroacoustic monitoring shall be performed to avoid and minimize impacts to marine mammals and other aquatic species. Additional impact avoidance and minimization measures will be implemented to avoid intake system entrainment, impacts to marine birds and mammals, introduction of non-native species, impacts to eelgrass, and production of marine debris.

8. **Other Agency Actions:** The Applicant has applied to the United States Army Corps of Engineers (Corps) for an Individual Permit, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. The Corps will initiate consultation with the National Marine Fisheries Service to determine whether Project implementation may result in impacts to federally-listed special-status species. The Applicant has received a Coastal Development Permit from the California Coastal Commission.
9. **CEQA Compliance:** As lead agency, the Humboldt Bay Harbor Recreation and Conservation District prepared an Environmental Impact Report for the Project (SCH no. 2013062068), pursuant to the requirements of the California Environmental Quality Act (CEQA).
10. **Antidegradation Policy:** The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's *Water Quality Control Plan for the North Coast Region* (Basin Plan) implements, and incorporates by reference, both the state and federal antidegradation policies. This certification is consistent with applicable federal and state antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this Project.
11. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this water quality certification. The Order may be accessed at this web address:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Receiving Water:	Humboldt Bay	
Filled and/or Excavated Areas:	Permanent impacts to waters of the state:	0.00015 acres
	Temporary impacts to waters of the state:	0.050 acres
Latitude/Longitude:	40.8067, -124.1882 <sup>2</sup>	
Certification Expiration:	March 6, 2022	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Humboldt Bay Mariculture Pre-Permitting Project (WDID No. 1B16123WNHU) as described in the application will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

**All conditions of this certification apply to the Applicant (and their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the Project as related to this Water Quality Certification.**

### **Project-Specific Conditions**

1. The maximum allowable water surface area in aquaculture production at culture sites 1, 2, and 3, shall not exceed 41,752 square feet (0.96 acres), 54,370 square feet (1.25 acres), and 37,932 square feet (0.87 acres), respectively. The maximum allowable volume of aquaculture equipment and cultured organisms at culture sites 1, 2, and 3, shall not exceed 127,756 cubic feet 166,472 cubic feet, and 116,142 cubic feet, respectively. The allowable benthic footprint at culture sites 1, 2, and 3, shall not exceed 673 square feet, 878 square feet, and 612 square feet, respectively. The allowable shellfish biomass at culture sites 1, 2, and 3, shall not exceed 647 dry weight kilograms, 843 dry weight kilograms, and 588 dry weight kilograms, respectively.
2. There shall be no less than a ten foot wide gap or buffer between each contiguous 10,000 square foot of aquaculture structures.
3. All maintenance cleaning of raft hulls, raft floats, and well infrastructure (excluding FLUPSY's) shall be performed at onshore locations. All biofouling organisms and

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<sup>2</sup> WGS84 datum



biological materials removed during these cleaning operations shall be collected and disposed of at an appropriate upland facility. Regular scraping of the floating upwelling system channels can occur on the rafts, provided that all biofouling organisms and biological materials are contained using tarps and/or screens. No discharge of untreated wash water or biofouling materials into Humboldt Bay shall occur during maintenance cleaning operations.

4. Pile driving shall occur only between July 1 and October 15. Hydroacoustic monitoring shall be performed to avoid and minimize impacts to marine mammals and other aquatic species. A qualified marine mammal monitor shall be present at all times during pile driving. Hydroacoustic monitoring shall be performed consistent with the Project requirements from the National Marine Fisheries Service and the California Coastal Commission.
5. The Applicant shall remove 21 existing pilings within the Project area to mitigate for installation of 8 new piles and potential impacts associated with the use of spud poles and anchors for aquaculture infrastructure stabilization. The Applicant shall remove six existing 12-inch diameter piles from subtidal site 1 and fifteen 12-inch diameter piles from subtidal site 2. Mitigation shall be completed prior to establishment of aquaculture operations.
6. All aquaculture operations shall:
  - i) Use screens during washdown of Manila clam seed and equipment to contain all clams regardless of size and prevent seed from falling into the bay;
  - ii) Remove all Manila clam seed from the nursery raft and FLUPSY system prior to reaching 12 millimeters shell size, at which size they are not sexually mature;
  - iii) Not discard culled shellfish into Humboldt Bay; and
  - iv) Be limited to the cultivation of Pacific oysters (*Crassostrea gigas*), Kumamoto oysters (*Crassostrea sikamea*), Manila clam seed (*Tapes philippinarum*), and native red algae such as *Chondracanthus*, *Gracilaria*, *Palmaria*, and *Porphyra* species. Culture of additional shellfish or algae species may be considered through an amendment to this certification.

#### **Project-Specific Conditions Requiring Reports**

7. Annual compliance reports shall be submitted to the Regional Water Board by January 31 of each year to document the Applicant's compliance with the certification terms and conditions. The first report shall be due January 31, 2018. Annual reports shall include:

- i) For each culture site, a description of the site's current status of operations, production, culture methods and compliance with the thresholds identified in condition 1;
- ii) A summary of lessee compliance issues and Applicant actions to achieve lessee compliance;
- iii) An assessment of the originally proposed culture operations versus existing, "as-built" conditions, including a description of location, methods, equipment, and other pertinent information;
- iv) A narrative describing the state of operations and upkeep on the site, including the presence of discarded, broken or abandoned tools, gear or equipment, and deposited shells;
- v) Representative photographs; and
- vi) The first annual report shall include documentation of pile removal, as required in condition 5. Before and after removal photographs shall be provided to demonstrate pile removal.

### **Standard Conditions**

- 8. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
- 9. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- 10. The validity of this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant. The total application fee for the Project is \$600. The Regional Water Board received \$600 from the Applicant on March 21, 2016.
- 11. This certification will be subject to annual billing during the construction phase ("Annual Active Discharge Fee"). The construction phase will be considered complete once all three sites are populated with lessees. This certification will also be subject to annual billing during the monitoring phase of the Project ("Annual Post Discharge Monitoring Fee"), per the current fee schedule, which can be found on our website: [http://www.swrcb.ca.gov/northcoast/water\\_issues/programs/water\\_quality\\_certification.shtml](http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml). The monitoring phase of the Project will be active as long as operations are ongoing and annual reports are being submitted. These fees will be automatically invoiced to the Applicant.

12. The Applicant shall notify the Regional Water Board upon Project construction completion to request termination of the Annual Active Discharge Fee and to receive a "Notice of Completion of Discharges Letter." If the Project is subject to the Annual Post Discharge Monitoring Fee, then the Applicant shall also notify the Regional Water Board at the end of the monitoring period to request termination of the fee and receive a "Notice of Project Complete Letter." The Applicant may be required to submit completion reports at the end of each of these phases. Regional Water Board staff may request site visits at the end of each Project phase to confirm Project status and compliance with this certification.
13. The Applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this certification, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area.
14. The Applicant is liable and responsible for the proper disposal, reuse, and/or recycling of all Project-generated waste in compliance with applicable state and federal laws and regulations.
15. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
16. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are implemented including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
17. Prior to implementing any change to the Project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the Applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement action(s).
18. All Project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent Project changes that could significantly impact water quality shall first be submitted

to Regional Water Board staff for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement actions.

19. The Applicant shall provide a copy of this certification and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the Project, and shall require that copies remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the Applicant to the Regional Water Board.
20. Work in flowing or standing surface waters, unless otherwise proposed in the certification application project description and approved by the Regional Water Board, is prohibited.
21. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the state including dry portions of the shoreline. At no time shall the Applicant or its contractors allow use of any vehicle or equipment, which leaks any substance that may impact water quality.
22. The Applicant shall not use leaking vehicles or equipment within State waters or riparian areas. Vehicles and equipment used within State waters shall be checked for leaks at the beginning of each work day.
23. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

24. The Regional Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
25. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this certification by letter and shall email a copy of the letter to the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov).

The successor-in-interest shall email the Regional Water Board Executive Officer at: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

- i) Effective date of ownership change;
  - ii) Requesting entity's full legal name;
  - iii) The state of incorporation, if a corporation;
  - iv) The address and phone number of contact person; and
  - v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.
26. Except as may be modified by any preceding conditions, all certification actions are contingent on:
  - i) The discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description and CEQA documentation, as approved herein; and
  - ii) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto.
27. The authorization of this certification for any dredge and fill activities expires on March 6, 2022. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

**Condition 7 is a requirement for information and reports.** Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

If you have any questions or comments, please call Brendan Thompson of my staff, at (707) 576-2699, or via e-mail at [Brendan.Thompson@waterboards.ca.gov](mailto:Brendan.Thompson@waterboards.ca.gov).

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Matthias St. John  
Executive Officer

170306\_BJT\_dp\_HumMariculture\_401

Original to: Mr. Jack Crider, Humboldt Bay Harbor, Recreation, and Harbor District, PO Box 1030, Eureka CA 95502-1030, [JCrider@HumboldtBay.org](mailto:JCrider@HumboldtBay.org)

cc: State Water Resources Control Board, [StateBoard401@waterboards.ca.gov](mailto:StateBoard401@waterboards.ca.gov)  
Ms. Jennifer Siu, EPA Region 9, [Siu.Jennifer@epa.gov](mailto:Siu.Jennifer@epa.gov)  
Ms. Holly Costa, U.S. Army Corps of Engineers, [Holly.N.Costa@usace.army.mil](mailto:Holly.N.Costa@usace.army.mil)  
Mr. Cassidy Teufel, CA Coastal Commission, [Cassidy.Teufel@coastal.ca.gov](mailto:Cassidy.Teufel@coastal.ca.gov)  
Ms. Rebecca Garwood, CDFW, [Rebecca.Garwood@wildlife.ca.gov](mailto:Rebecca.Garwood@wildlife.ca.gov)  
Mr. Greg O'Connell, SHN, [GregOConnell@shn-engr.com](mailto:GregOConnell@shn-engr.com)  
Ms. Kasey Sirkin, U.S. Army Corps of Engineers, [L.K.Sirkin@usace.army.mil](mailto:L.K.Sirkin@usace.army.mil)