



REQUEST FOR PROPOSALS

Environmental Consulting Services for the Lower Sutter Bypass Anadromous Fish Habitat Restoration Planning Project
Prop 68 Rivers and Streams Restoration Grant Number Q1996062
Sutter County, CA



River Partners
580 Vallombrosa Avenue
Chico, California 95926

SECTION 1 – GENERAL OVERVIEW

1.1. Introduction

River Partners received an award from the California Department of Fish and Wildlife (CDFW) Prop 68 Rivers and Streams Restoration Grant Program to establish a planning and structured decision-making process that will lead to the development of a conceptual anadromous fish habitat restoration plan necessary to make capital improvements to benefit fish in the Lower Sutter Bypass in Sutter County. River Partners will develop a team to facilitate discussions with responsible agencies and willing landowners to understand the habitat requirements of migrating salmon and the feasibility/acceptability of physical and land management changes.

River Partners requests proposals for professional services to meet the requirements and lead the preparation of a conceptual anadromous fish habitat restoration plan and support outreach efforts to engage working group members in deep dives on specific topics. The selected consultant will interact with River Partners, The Essex Partnership, landowners (CDFW, Goose Club, and Dos Rios Norte), Department of Water Resources (DWR) and stakeholders.

All questions concerning this RFP shall be submitted by e-mail to hswagerty@riverpartners.org on or before 5 p.m., Monday, October 19, 2020. Should answers to questions amend the RFP, River Partners will issue an RFP Addendum.

1.2. RESPONSE DEADLINE

Submittals will be accepted no later than 5 PM on Monday, November 2, 2020. One electronic copy in bookmarked PDF format for each proposal must be received by River Partners. Files and attachments must not exceed 10 MB in size, or they will not be able to be received. Hardcopy submittals will not be considered.

Electronic proposals should be emailed to:

River Partners

RE: Lower Sutter Bypass Environmental Consulting Services RFP

hswagerty@riverpartners.org

1.3. WITHDRAWAL OF PROPOSAL SUBMITTALS

A proposal submittal may be withdrawn at any time prior to the time set for receipt of submittals, provided that a request for withdrawal prepared by the submitter or a duly authorized representative is filed with River Partners. The withdrawal of a submittal package shall not prejudice the right to resubmit prior to the time set forth herein above.

1.4. REJECTION OF PROPOSAL SUBMITTALS

River Partners reserves the right to reject any or all submittals received in response to this RFP or to cancel this RFP or to terminate the selection proceedings at any time, if it determines such action is in the best interests of River Partners.



1.5. PROJECTED TIMETABLE

The following schedule has been established for informational purposes. Efforts will be made to adhere to this plan, but River Partners reserves the right to adjust the dates as may be required by circumstances.

- RFP available to prospective proposers..... October 12, 2020
- Written Question Submittal Deadline..... October 19, 2020
- Final Date for Proposal Submittals..... November 2, 2020
- Selection of Contractor.....November 9, 2020
- Contract Executed.....November 16, 2020

1.6. AWARD CONTRACT

The Consultant submitting the successful proposal shall be required to execute a contract using River Partners' professional services contract (Attachment A to this RFP). Consultant shall be selected and designated to perform services for the Project for a term not to exceed 18 months unless a formal extension of the term of the agreement is authorized by River Partners and issued in the form of an Agreement Amendment.

SECTION 2 – SCOPE OF WORK

2.1 DESCRIPTION OF WORK

River Partners, a 501(c)(3) non-profit organization, is requesting proposals from consultants for Environmental Consulting Services. River Partners will be selecting a technical team to help develop conceptual restoration project alternatives for the Lower Sutter Bypass Anadromous Fish Habitat Restoration Planning Project.

2.2 PROJECT LOCATION

The project is located in the lower Sutter Bypass just north of the confluence of the Sacramento and Feather Rivers in Sutter County. The 19-mile-long bypass is a leveed channel adjacent to the Feather River and is a key element of the Sacramento Valley's flood control system. The Bear and Yuba rivers flow into the Feather River several miles upstream from the project site.

Sutter Bypass is one of the last and most important functioning wetland floodplain systems left in the Central Valley. Lower Sutter Bypass is especially valuable because of its location at the nexus of the Sacramento River, Feather River and Butte Creek where Sacramento River origin winter, spring and fall run Chinook salmon and steelhead, and fall and spring run Chinook and steelhead from Butte Creek and the Feather/Yuba River can all benefit from this productive floodplain rearing habitat.

The north end of the project boundary is 10.5 miles upstream from the confluence of the Sacramento and Feather rivers and includes the Nelson Slough Unit of the Feather River Wildlife Area. The Nelson Slough is adjacent to over 3,500 acres of conservation-oriented properties along the Feather River and 4,500 acres of conservation-oriented properties along the Sutter Bypass. It has great potential to provide a vegetative habitat mosaic that benefits riparian associated wildlife, rearing habitat, and food-web productivity to support native anadromous fish on the floodplain.

Agricultural lands run south with the southern boundary ending where Sacramento Slough and Sacramento River flows into the Feather River at the town of Verona. These lands span southward for 5.5 miles and is bounded by Lower Butte Creek to the west and the Feather River on the east.

2.3 PROJECT DESCRIPTION

Under the current hydrologic operation of the Bypass, flood frequency and fish access to the floodplain are limited to relatively infrequent large flood events. The floodplains are farm fields that produce high-quality rice. This planning project looks at opportunities to increase the frequency and extend the duration of inundation so that tens of millions of fish can access the floodplain farm fields multiple times every year. Connecting land and water this way provides refuge for young fish and allows them to access an abundant food web on the warming floodplains. As high flows recede and return to the main channel, floodplain-produced fish food can flow downstream, enriching the rest of the watershed.

Changing management of the bypass to better meet the objectives of a diverse group of stakeholders is a challenge that is ideally suited to a structured decision-making process. Structured Decision-Making (SDM) is a commonly used process to guide planning projects and facilitate transparent decisions. The process typically involves six key steps beginning with the clear articulation of the problem and definition of project objectives. The process then involves identifying alternatives for achieving the

project objectives, followed by analysis of the consequences and trade-offs of each alternative. Based on the results of the trade-off analysis, decisions are made on appropriate actions.

Through this planning project, the conceptual anadromous fish habitat restoration plan will be:

- Actionable and feasible
- Relevant to fish recovery
- Grounded in best available science
- Supported by a critical mass of communities
- Consistent with existing authorities

2.3.1 PLAN DEVELOPMENT

2.3.1.1 Review Existing Information - The Consultant will review existing information produced for prior and concurrent related planning processes (Lower Feather River Corridor Management Plan, Feather River Regional Flood Management Plan, planning work currently underway around Tisdale Weir and the Sutter Bypass).

Technical areas consist of:

- Fisheries Biology and Ecology
- Hydrology and Hydraulics (ecologically relevant flows and flood flows)
- Agriculture

Findings will be documented in a draft plan chapter: Existing Conditions in the Study Area. The draft plan chapter will identify information sources reviewed, key findings, additional management and analysis questions, and relevance to fisheries habitat planning.

Deliverables:

- Draft Existing Conditions Chapter
- Final Existing Conditions Chapter

2.3.1.2 Develop Workplan - Consultant will lead the development of a detailed workplan with scope, budget, and schedule in consultation with CDFW and a Core Working Group consisting of a small group of landowners and stakeholders with decision-making authorities and/or management responsibilities in the project area. This working group is responsible to the structured decision-making framework and will ultimately hold the responsibility to support implementation of the recommended actions.

Deliverables

- Draft Workplan
- Final Workplan

2.3.1.3 Plan Development - The Consultant will develop a Conceptual Anadromous Fish Habitat Restoration Plan for the Lower Sutter Bypass that describes physical alterations to improve floodplain connectivity and habitat while meeting the needs of key stakeholders identified in the charter. Drafts of chapters 2-6 will be presented during task 4.4 workshops and revised between workshops based on input from workshop participants.

The plan may include, but not limited to, the following chapters:

1. Introduction and Purpose of the Plan
2. Existing Conditions
3. Conceptual Ecological Model for Anadromous Fish Habitat existing and desired future conditions
4. Conceptual Agricultural Model for continued production existing and desired future conditions
5. Conceptual Flood Management Model for existing and desired future flood system management
6. Project Alternatives, Feasibility, Preferred Alternative
7. Ongoing research, management, and analysis needs
8. Conceptual Design Plans

Because the project alternatives will include physical alterations to improve floodplain connectivity and habitat, they must be evaluated for potential hydraulic impacts within the flood control system (Sutter Bypass, Feather River and Sacramento River). The Consultant will coordinate with the Department of Water Resources to use existing models and amend existing contracts to analyze project alternatives. The hydrologic/hydraulic assessment will proceed concurrently with the development of the draft restoration plan, as this assessment will help define site-specific restoration options that provide flood-neutral effects.

Deliverables:

- Draft Table of Contents for the Lower Sutter Bypass Conceptual Anadromous Fish Habitat Restoration Plan for CDFW review
- Draft Lower Sutter Bypass Conceptual Anadromous Fish Habitat Restoration Plan
- Final Lower Sutter Bypass Conceptual Anadromous Fish Habitat Restoration Plan

2.3.2. Outreach and Engagement

The Consultant will coordinate with Bruce DiGenarro (The Essex Partnership) to build on the past work in the Lower Sutter Bypass and in the Central Valley to build a stakeholder list and coordinate outreach through known organizations including but not limited to: Reclamation Districts 1001 and 108, Yuba Water Agency, the Farm Bureau, Sacramento River Settlement Contractors, and the North Sacramento Valley IRWM. The team will also consider working closely with local partners to pair community workshops with other existing meetings or workshops to reduce stakeholder fatigue and capitalize on the power of local partners.

2.3.2.1 - Work Group Meetings - The Work Group will meet by phone or video conferencing to ensure completion of the plan within the 18-month timeframe. Meetings will do “deep dives” on specific issues and identify recommendations that can be shared with stakeholders at workshops. Contractor will coordinate and provide support to The Essex Partnership in these work group meetings.

Deliverables:

- Materials for each Work Group meeting
- Work Group Meeting summaries

2.3.2.2 – Facilitate Stakeholder Workshops

Consultant will assist The Essex Partnership in organizing and facilitating a series of stakeholder workshops designed to engage key stakeholders on specific issues. The consultant will be expected to co-host five (5) stakeholder workshops over the course of the project. These would likely include a workshop early in the process to get early input on the process, three workshops during the process to engage stakeholders on specific issues (fish ecology, agriculture production, flood management), and a workshop near the end of the project to share findings and recommendations for moving forward.

Deliverables:

- Five stakeholder workshops, including agendas and materials
- Workshop notes

SECTION 3 – RESPONDING TO THE RFP

3.1 MINIMUM REQUIREMENTS

Project Proposal and Approach

Please describe in detail the approach you would take to complete an conceptual restoration plan for the described project – include specific tasks, what the various stages of this process would be (if applicable), and provide a detailed timeline and cost estimate for each stage. Please submit a proposal that includes at a minimum the following elements:

- 1) Qualifications and References
 - i. Contractor is encouraged to include details regarding demonstrated and specialized experience that is responsive to the selection criteria in section 3.2, and the names of at least three clients that are willing to provide references
 - ii. Contractor will include, at minimum, 2 team members that are familiar with the local landscape, salmonid ecology, experience in salmon habitat restoration design, and has strong working relationships with landowners and local stakeholders.
 - iii. Contractor with an existing contract with DWR for hydraulic modeling analysis is preferred, but not required.
 - iv. If applicable, please describe any of the following certifications: Minority Business Enterprise, Woman Business Enterprise, Veteran-Owned Business, or other disadvantaged business enterprise
- 2) Scope of Work
 - i. Specific Tasks and Deliverables
 - ii. Include timeline for relevant tasks and deliverables
- 3) Cost Estimate
 - i. Task Budget and total cost estimate (Available budget: \$272,500)
 - ii. Please also provide a Schedule of Rates for the principal firm (or firms if there is a joint venture) if not addressed in the cost estimate/budget. The schedule of rates shall consist of a list of Project staff by title with hourly billing rates, and also indicate: (a) whether support services are billed as direct costs or are included in overhead; and (b) if handling charges or profit are added to other direct costs (e.g., subcontractor's costs, reimbursables)
- 4) Staff Experience
 - i. Contractor should include brief bios and resumes for key staff detailing relevant qualifications.
 - ii. Up to two project descriptions for similar work with dates, budget, deliverables, and client contact information.

Please limit the proposal to 20 pages in total length including all the above elements. If proposal includes subconsultants, each subconsultant increases the page length limit by 5 pages per subcontractor so that each may provide a firm profile, relevant project experience, and key staff resumes.

3.2 EVALUATION AND SELECTION PROCESS

	SELECTION CRITERIA	MAXIMUM POINTS
1	Quality and demonstrated effectiveness of the firm’s multi-benefit approach to floodplain or river restoration design and engineering process.	20
2	Collective professional experience of the firm or team in performing services of similar nature and scope, including multi-benefit floodplain restoration projects requiring hydraulic modeling.	20
3	Cost effectiveness of the proposal	20
4	Expertise, experience, education, and certifications/licenses of key personnel to be assigned.	15
6	Staffing capability of the firm or team across all disciplines to meet the expected outcomes in a timely manner.	15
7	Existing contract with DWR for hydraulic modeling	10
	TOTAL	100

River Partners will review, evaluate and score each proposal based on the above selection criteria. These factors shall be weighted according to the nature of the proposed Project, the complexity and special requirements of the specific services, and the needs of the project team. All proposals received will be evaluated to determine the extent to which they comply with solicitation document requirements. If a proposal fails to meet a material solicitation document requirement, the proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with solicitation document requirements. Immaterial deviations may cause a proposal to be rejected if not corrected upon request.

During the evaluation process, River Partners may require the Consultant to answer questions about their proposal. Failure of the Consultant to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

Applicants will be notified in writing of the selection and overall ranking results.

ATTACHMENT A

River Partners Professional Services Contract



EXHIBIT A
COMPENSATION, PAYMENTS TERMS, AND BUDGET

1) COMPENSATION

Partners will reimburse Contractor for completion of work, not to exceed \$(INSERT CONTRACT AMOUNT).

2) PAYMENT TERMS

Contractor shall submit payment requests on a monthly basis for all work completed during the preceding month upon completion of the Work. Each request shall indicate this Agreement number, describe the work accomplished, and provide a detailed listing of expenses including hours worked.

Partners shall submit payment requests to the CA Department of Fish and Wildlife (CDFW) in accordance the conditions of the Prime Agreement, Exhibit D. Payment from Partners to Contractor shall be made within seven (7) days of Partners' receipt of payment from CDFW. Contractor acknowledges that ten percent (10%) of each approved amount due Contractor may be withheld by CDFW until it has approved the completion of the project described in the Prime Agreement, Exhibit D.

Contractor shall retain all records pertinent to this agreement for a period of no less than four (4) years from the expiration or termination date of this Agreement. As used in this provision, "records" includes supporting documentation such as payroll detail, receipts for equipment, travel, or other general ledger information and other information required by CDFW.

3) BUDGET

(INCLUDE BUDGET TABLE)

TERMS AND CONDITIONS

1) NATURE AND EXTENT OF SERVICES

Contractor agrees to perform the tasks described in the Scope of Work set forth in Exhibit A (the Work).

2) COMPENSATION AND PAYMENT

Contractor will bill Partners and Partners will pay Contractor in accordance with payment terms as defined at Compensation and Payment Terms in Exhibit B.

3) NOTICES

All notices required or to be given by either party to the other shall be in writing and shall be considered given when personally delivered to the Manager identified in the Agreement or 48 hours after it is deposited in the U. S. Mail, postage prepaid, addressed as set forth on the signature page of the Agreement.

4) PROFESSIONAL CAPACITY

Contractor shall perform the Work in its professional capacity as an independent contractor and at no time shall Contractor be deemed an employee or agent of Partners, nor shall it have the authority to obligate Partners in any manner. Contractor warrants that it has reviewed the Scope of Work and the conditions under which it is to be performed, and that it is experienced in the performance of such work and is qualified to estimate the cost and the time required to perform the Work in accordance with this Agreement. It has or will obtain and maintain at its sole expense all licenses and permits necessary for it to perform the Work required by this Agreement.

5) CONFLICT OF INTEREST

Contractor shall comply with all applicable State laws and rules pertaining to conflict of interest, including, but not limited to, Government Code section 1090, Government Code section 81000 et seq. (Political Reform Act), and Public Contract Code sections 10410 and 10411.

- a) Contractor certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.
- b) Contractor shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the actual appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

6) NONASSIGNABILITY

This Agreement may not be assigned to any other entity or person without the express written consent of Partners.

7) SUBCONTRACTS

Contractor shall not enter into subcontracts for any Work contemplated under this Agreement without the prior written consent of Partners.

8) INDEMNIFICATION

With the exception that this section shall not be construed to require indemnification to a greater extent than allowed by applicable public policy, Contractor shall defend, indemnify and hold harmless Partners and its respective officers, agents and employees, and each of them, of and from all claims, demands, causes of actions, costs, liability to the extent caused by Contractor's performance under this agreement ("Claims") including, but not limited to:

- a) Personal injury to or death of any person or damage to real or personal property, including loss of use, caused or alleged to be caused in whole or in part by any act or omission of Contractor or its employees, agents, subcontractors or suppliers regardless of whether a party being indemnified actively or passively contributed to such injury or damage.
- b) Penalties imposed by law on account of violation of any law, regulation, or standard caused by the act or omission of Contractor or its employees, agents, subcontractors or suppliers including, but not limited to, those laws, regulations and standards relating to the protection of the environment and the occupational health and safety of workers regardless of whether or not the equipment of Partners or others is being used.
- c) Infringement of any patent rights or copyrights which may be brought against Partners as a result of Contractor's performance of the Work
- d) Violation of any term of this agreement.

The foregoing agreements extend to Claims arising at any time after this agreement as well as those arising during its term. Contractor shall defend all Claims at Contractor's expense and pay all judgments and decrees that may arise therefrom and reimburse Partners and its respective officers, agents and employees for all costs and legal expenses that may arise from any Claim. Contractor shall not be obligated to provide any indemnity for any Claim arising from the sole negligence or willful misconduct of the party seeking such indemnity or for defects in design furnished by such person.

If the Agreement is identified as a sub-agreement in the Scope of Work, Exhibit A, Contractor shall extend indemnification as described in this section to the Funder of the prime contract, its officers, agents, and employees.

9) INSURANCE

Contractor shall, at its expense, obtain and maintain insurance on all of its operations, in companies admitted in the State of California, acceptable to Partners, as follows:

- a) Comprehensive General Liability or Commercial General Liability Insurance covering all operations by or on behalf of Contractor providing insurance for bodily injury liability and property damage liability for the limits of liability set forth below, including coverage for contractual liability insuring the obligations assumed by Contractor in this agreement, broad form property damage and personal injury liability. "Modified Occurrence" and "Claims Made" policies are not acceptable.

- b) If Contractor carries a Comprehensive General Liability policy the limits of liability shall be not less than a combined single limit for bodily injury, property damage and personal injury liability of each occurrence of \$1,000,000 each occurrence, \$1,000,000 aggregate.
- c) If Contractor carries a Commercial General Liability (Occurrence Form) policy, the limits of liability shall not be less than \$1,000,000 each occurrence (combined single limit for bodily injury and property damage), \$1,000,000 for personal injury liability, \$1,000,000 aggregate for products-completed operations and \$2,000,000 general aggregate. If the policy does not have an endorsement providing that the general aggregate limit applies separately to this project or if defense costs are included in the general aggregate limit, then the required general aggregate limit is \$3,000,000.
- d) Comprehensive Automobile Liability Insurance including coverage for all owned, non-owned and hired automobiles with limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. If Contractor's general liability insurance coverage is provided by the Commercial General Liability (Occurrence Form) policy, Contractor's Automobile Liability Insurance policy shall include coverage for Automobile Contractual Liability.

Contractor shall include Partners as an additional insured on a primary and noncontributing basis on its policies and provide Partners with Certificates of Insurance. Delivery of these Certificates to Partners shall be a condition precedent to the first payment to Contractor.

10) AUTHORIZATION, AMENDMENT, AND COMPLETION

Contractor agrees to commence performance of the Work promptly upon written authorization from Partners to proceed and to complete the Work within the time set forth in Exhibit A. During the performance of the Work, Contractor shall promptly inform Partners of any changes in contact information or suggested changes in the scope of the Work, as well as any anticipated difficulties in completing the Work in a timely manner or in submitting reports by their due dates.

11) RIGHT OF ENTRY

If Work requires Contractor to access property, Contractor shall be responsible, coordinating with Partners, in obtaining the right to enter property where the Work is to be performed.

12) SAFETY PRECAUTIONS AND PROTECTION OF PROPERTY

Contractor shall plan and conduct the Work to safeguard persons and property from injury. Contractor shall direct performance of Work in compliance with reasonable safety and work practices and applicable federal, state, and local laws, rules, and regulations including, but not limited to occupational safety and health standards. Neither the issuance of special instructions by Partners nor the adherence thereto by Contractor shall relieve Contractor of the sole responsibility to maintain safe and efficient working conditions.

13) EXPENSES AND TAXES

Contractor shall pay when due all wages and other expenses incurred by Contractor in performing the Work, and shall require its subcontractors, if any, to do the same, including without limitation, payroll taxes and other taxes arising as a result of its performance of the Work.

14) CONFIDENTIALITY

In the course of the Work covered under this Agreement, Contractor may acquire or have access to confidential information such as:

- Company information including mailing lists, reports, files, memoranda, records, and software
- Information received from third parties under confidential conditions
- Other technical, business or financial information or trade secrets, the use of which might reasonably be construed to be contrary to the best interests of Partners.

Contractor understands and agrees that such confidential information is disclosed to Contractor in confidence and solely for the use of Partners. Contractor acknowledges that Contractor has no ownership right or interest in any confidential information used or developed during the course of this Work. Contractor understands and agrees to keep such confidential information confidential at all times after the completion of the Work with Partners, and not make use of confidential information for Contractor's own behalf or on behalf of any third party.

15) OWNERSHIP OF INTELLECTUAL PROPERTY

Materials prepared or delivered by Contractor to Partners under the terms of this Agreement shall be works made for hire created for and owned by Partners and are the exclusive property of Partners. To the extent that any material does not constitute work made for hire as a matter of law, Contractor hereby grants and assigns to Partners exclusive rights to the material under United States intellectual property law and all international conventions, including without limitation, copyrights, trade secrets, and patents in and to such materials and the right to copyright the material and any renewals thereof in the name of Partners. Contractor also hereby assigns to Partners and/or waives any and all claims that Contractor may now or hereafter have in any jurisdiction to so-called "moral-rights" in connection with the Work. Contractor shall secure the same agreement from all independent contractors performing services in connection to Contractor's performance under this agreement.

Contractor warrants that it is the sole creator of the Work except for such material from copyrighted sources as is reproduced by written permission of the copyright owner, and that the Work: is original (except for such material from copyrighted sources as is reproduced by written permission of the copyright owner); contains no matter that is scandalous, obscene, or libelous or otherwise contrary to law; and contains only information and data that is true and accurate to the best of the Contractor's knowledge, belief, and expertise.

16) LEGAL COMPLIANCE

Contractor shall comply with all applicable laws and regulations in the performance of the Work and coordinate and co-operate with Partners and other persons or entities in the performance of the Work.

If the Agreement is identified as a sub-agreement in the Scope of Work, Exhibit A, Contractor will comply with the Prime Contract, included as Exhibit D if applicable, to the extent that the Prime Contract imposes additional obligations on Contractor.

17) NON-DISCRIMINATION

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy disability leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.) and the applicable regulations (Cal. Code Regs., tit. 2, § 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this Agreement. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all subcontracts entered into to perform work under this Agreement.

18) DRUG-FREE WORKPLACE CERTIFICATION

By signing this agreement, Contractor hereby certifies under penalty of perjury under the laws of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.).

19) UNION ORGANIZING

Contractor, by signing this Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Agreement. Furthermore, Contractor, by signing this Agreement, hereby certifies that no state funds disbursed to Partners to pay Contractor will be used to assist, promote or deter union organizing.

20) FORCE MAJEURE

Either party shall be excused for any delay in performance hereunder arising from a cause beyond its control which it could not through the exercise of due diligence have avoided, including an action or inaction of any governmental authority, an act of God (which includes, but is not limited to, all natural disasters and substantial weather disturbances), and accident such as a fire or explosion not due to the negligence of the party seeking to be excused, war, acts of terrorism including threats of terrorism, disease or medical epidemics or outbreaks, a strike, a riot, or a substantial failure of public transportation facilities. The party seeking to be excused shall give written notice and full particulars of the cause of delay and its effect upon the performance of the party as soon as possible after its occurrence.

Contractor and its subcontractors shall, at all times, take reasonable steps within their respective powers and consistent with best practices (but without incurring reasonable additional costs) to:

- Prevent Force Majeure Events affecting the performance of the Contractor's obligations under this agreement

- Mitigate the effect of any Force Majeure Event, and
- Comply with its obligations under this Agreement.

The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event to determine the best course of action for resuming the Scope of Work and to set new performance timelines

21) APPLICABLE LAW

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

22) DISPUTE RESOLUTION

In an effort to resolve any conflicts that arise during the execution of this Work, or following the completion of Work, which they are unable to resolve within a reasonable time, Partners and Contractor agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. Each party shall bear one-half of the cost of mediation.

If this Agreement is identified as a sub-agreement in the Scope of Work, Exhibit A, then all claims and disputes arising under this agreement shall be decided by the claims procedure including arbitration defined by the Prime Contract. If there is no agreement to arbitrate, no claims or disputes shall be arbitrated unless the parties so agree in writing. In the event of a claim or dispute between Partners and Funders relating to this agreement or Contractor's performance, it shall be the responsibility of Contractor to prepare and present Partner's case to the extent that the proceedings are related to this agreement. Contractor shall be bound by the results of such proceedings to the same degree as Partners.

23) TERMINATION

- a) Partners may cancel this agreement, without cause, by giving Contractor thirty (30) calendar days' written notice of cancellation.
- b) Failure by the Contractor to comply with any material term of this Agreement shall be deemed to be a default and constitute cause for Partners to terminate this Agreement if not cured within 48 hours after delivery of written notice to Contractor specifying the failure. In addition, Partners may pursue any legal remedy to which it may be entitled.
- c) If this Agreement is defined as a sub-agreement in the Scope of Work, Exhibit A, Partners may also terminate this Agreement upon notice to Contractor if, for any reason, the Prime Contract is terminated or modified so that Contractor's services are no longer required. In such event, Contractor shall be entitled to payment for such portion of the Work as it shall have performed prior to receipt of notice of termination but shall not be entitled to damages for lost profits or opportunity.
- d) In the event of termination of this Agreement prior to completion of the Work, Contractor shall immediately (unless otherwise directed by Partners in its notice if Partners initiated the termination) undertake all reasonable steps to wind down the Work cooperatively with Partners, including but not limited to the following:

- i) Stop any portion of the Work that is incomplete (unless work to be completed and a different date for termination of Work are specified in Partners' notice).
- ii) Place no further work orders or enter into any further subawards or subcontracts for materials, services or facilities, except as necessary to complete work as specified in Partners' notice.
- iii) Terminate all pending work orders, subawards, and subcontracts for work that has not yet commenced.
- iv) With the prior written consent of Partners, promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may be caused by the failure to complete the Work, including but not limited to reasonable settlements of any outstanding claims arising out of termination of work orders, subawards, and subcontracts.
- v) Deliver or make available to Partners all data, drawings, specifications, reports, estimates, summaries, and other information and material as may have been accumulated by the Contractor under this Agreement, whether completed or in progress.

24) BREACH AND REMEDIES

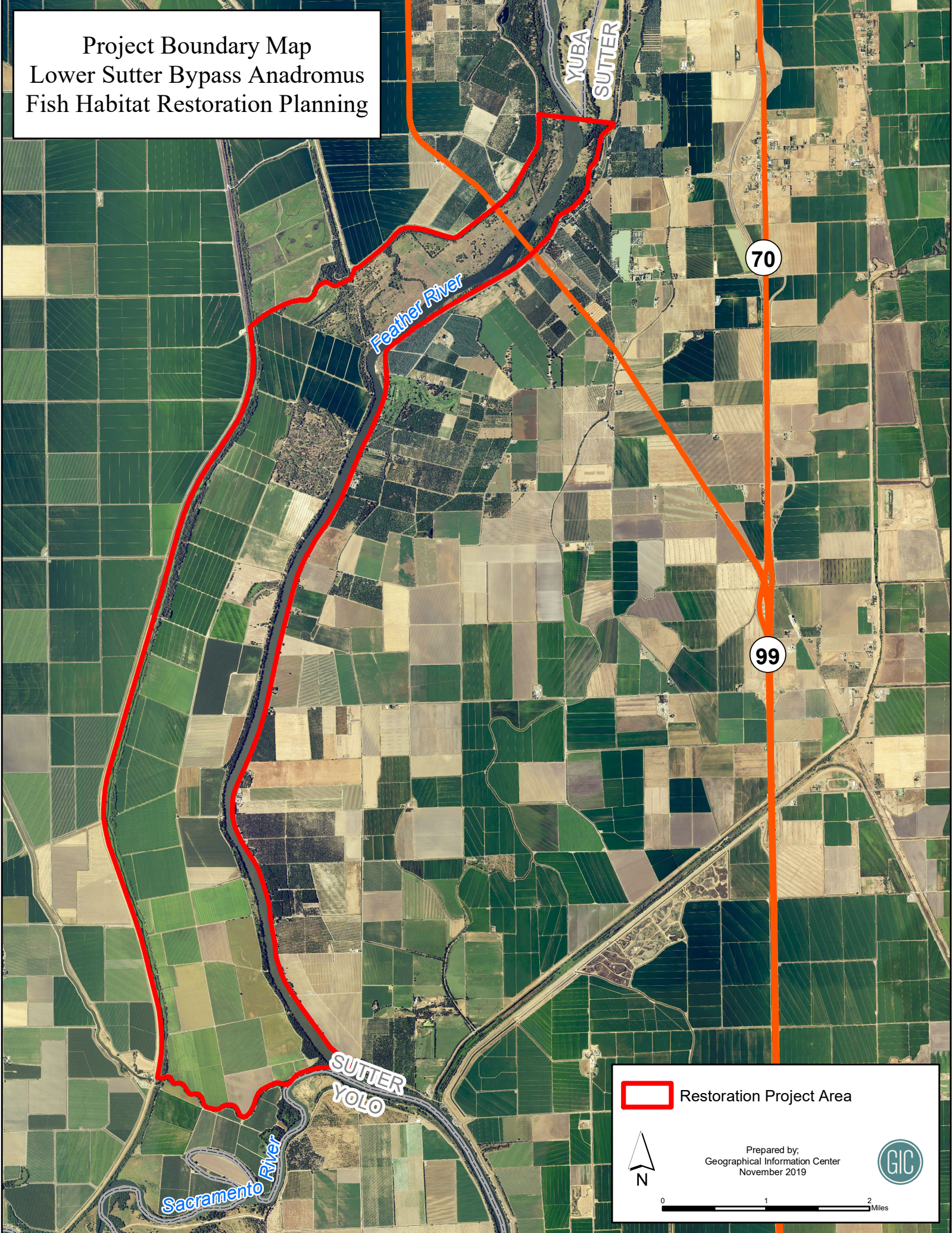
If Contractor fails to perform any of the terms, covenants, or conditions of this Agreement, including repeated failure by Contractor to submit invoices within the time set forth in Compensation and Payment Terms, Exhibit B, after ten (10) days written notice by Partners, Contractor shall be in breach under this Agreement and Partners may, to the extent permitted by applicable law, exercise any one or more of the following remedies:


- a) Partners may declare due, sue for, and receive from Contractor immediately, or at a time specified by Partners, the Work due under this Agreement at the time of the breach, including the Work due for the unexpired term of this Agreement;
- b) Partners may withhold any monies due to Contractor from and after the date of breach and require Contractor to pay for all expenses incurred in connection with the enforcement of any Partners' remedies, including all costs of collection, reasonable attorney's fees, and court costs.
- c) All of Partners' remedies are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised either concurrently or separately. Exercise of any one remedy shall not be deemed an election of such remedy, or to preclude the exercise of any other remedy. No failure on Partners' part to exercise any right or remedy and no delay in exercising any right or remedy shall operate as a waiver of any right or remedy or to modify the terms of this Agreement. A waiver shall not be construed as a waiver of any other of subsequent waiver.
- d) Partners shall not be liable for incidental or consequential damages including, but not limited to, loss of profits, commitments to subcontractors, rental or lease agreement(s), and personal services contracts unless expressly authorized in writing by Partners.

ATTACHMENT B

Project Location

Project Boundary Map
Lower Sutter Bypass Anadromus
Fish Habitat Restoration Planning



 Restoration Project Area



Prepared by:
Geographical Information Center
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