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OAKLAND
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CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: June 23, 2009

RE: **Resolution Authorizing the City Administrator to Enter Into a Cooperative Agreement with the Alameda County Flood Control and Water Conservation District and to Authorize the Expenditure of an Additional \$395,000.00 (Three Hundred Ninety-Five Thousand Dollars) in Measure DD Creek Restoration Funds to Implement the Lion Creek Restoration Project**

SUMMARY

A resolution has been prepared authorizing the City of Oakland (City) to enter into a Cooperative Agreement (Agreement) with the Alameda County Flood Control and Water Conservation District (District) to implement the Lion Creek Restoration Project (Project). The resolution also authorizes the City to expend an additional \$395,000.00 in Measure DD Creek Restoration funding for this Project. The Project includes 1.5 acres of new creek and wetland habitat, increased flood capacity, and a pedestrian bridge and pathway. Under the Agreement, the District will contribute \$2,610,000.00 to the project. The City will contribute \$2,244,000.00 including \$1,849,000.00 in previously approved funding and the currently requested \$395,000.00 from Measure DD Creek Restoration funds. The Lion Creek Restoration Project was first approved by the Council in 2004.

FISCAL IMPACT

Approval of this resolution will authorize the expenditure of \$395,000.00 in Measure DD Creek Restoration funds to complete the construction of the Lion Creek Restoration Project. The bond funds will become available upon the sale of Series 2009B in August 2009 and the funds will be located in Watershed and Stormwater Program (88345), Measure DD – Capital Improvement Fund (5320), Creek Restoration DD Project (C244810).

The total project cost is \$4,854,000.00 for engineering, design, and construction. The District will fund \$2,610,000.00 in design and construction. The City will fund \$2,244,000.00 in design and construction. The City contribution includes the current request of \$395,000.00 in Measure DD Creek Restoration funds and \$1,849,000.00 in previously authorized funds as follows:

- \$700,000.00 Habitat Conservation Fund grant funds
- \$649,000.00 Union Pacific Railroad and Oakland Army Base mitigation funds
- \$500,000.00 Measure DD Creek Restoration bond funds

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Three years of adaptive management costs for landscaping and natural channel maintenance are included in the total project costs.

BACKGROUND

The Lion Creek Restoration Project is being implemented as part of a larger effort to redevelop the housing and park in the residential community formerly known as Coliseum Gardens, now known as Lion Creek Crossings. The project will be built in the newly constructed Lion Creek Crossings Park and includes 1.5 acres of new creek and wetland habitat including a natural creek channel, widening a section of the District-owned flood control channel to improve flood flow capacity, diverting upstream and tidal waters into the new natural creek and wetland, and construction of a pedestrian bridge, pathway, and interpretive signage. The goals of the project are to improve water quality, create creek, wetland, and native plant habitat, and create an attractive public amenity with access for recreation and educational opportunities. The Project will serve the local neighborhood, including the new Lion Creek Crossings housing development, that surrounds the park, and local schools.

KEY ISSUES AND IMPACTS

City-District Agreement

The Lion Creek Restoration Project includes modifications to a District-owned facility and as such, the District is an essential partner on this project. Through the participation of the District, the City has been able to secure \$2,610,000.00 in funding as well as engineering and design review services from the District. The Agreement is required in order for the District to proceed with the project and meet construction timelines. If the Agreement is approved, the County will move forward with construction this summer. The Agreement includes division of responsibilities for funding, construction, and maintenance.

Construction

The project will be constructed in two phases. The first phase, to be constructed by the District beginning in July 2009 and completed in October 2009, includes modifications to the flood control channel, installation of the pedestrian bridge, and rough grading of the new creek and wetland area. The second phase, to be constructed by the City beginning in October 2009 and completed in March 2010, includes landscaping, the pedestrian path, interpretive signage, and a three-year adaptive management period through March 2013.

Maintenance

- District - District maintenance responsibilities include the entire reach of the existing flood control channel, fencing surrounding the flood control channel, gates installed at headwalls on Lion Way and Leona Creek Drive, and maintenance and operation of the water diversion gate and associated control house and monitoring system.

- City maintenance responsibilities include landscaping, park amenities, and transition structures linking the flood control channel to the new natural channel. The project has been coordinated with the Office of Parks and Recreation and the Public Works Agency, Department of Facilities and Environment, and has been designed to minimize on-going maintenance responsibilities. The landscaping is comprised of low, slow-growing, drought-tolerant native vegetation that should need only minimal pruning and no irrigation after the three-year establishment period. A three-year adaptive management period will be included in the construction contract to ensure that plants are well established, deter weed growth through density, and can succeed without future irrigation. Design elements to deter pedestrian entry to project areas, such as tidal flushing and deeper channel pools, have been included. The site will be included in the City's bi-annual cleanup events, Earth Day and Creek to Bay Day, and staff will be working with Lion Creek Crossings Resident Services staff and Bay-preservation groups with volunteer programs, such as Save the Bay and the Audubon Society's Eco-Oakland Program to establish on-going volunteer-based restoration and cleanup activities at the site.

A detailed description of the division of responsibilities between the District and the City is provided in the Agreement, included with this report as *Attachment A*.

Funding Request

The requested \$395,000.00 in DD Creek Restoration funds are needed to complete construction of the City-phase of the project. Due to FEMA regulations that modifications to any flood control facility must meet 100-year storm capacity, the project scope and total project cost increased from original estimates. The DD Creek Restoration funds will be used for construction and adaptive management costs. Staff will return to Council this fall to request authorization to enter into a construction contract for the City phase of the project.

SUSTAINABLE OPPORTUNITIES

Economic: Entering into the Agreement with the District will secure \$2,610,000.00 in funding from the District for implementation of the Lion Creek Restoration Project. City of Oakland small and local contractor regulations will be used to implement the City portion of the project.

Environmental: Implementing the Lion Creek Restoration Project helps to meet the goals of the Watershed and Stormwater Management Program, the OSCAR element of the General Plan, and the City's Creek Protection, Stormwater Management, and Discharge Ordinance. These goals are met through the creation of 1.5 acres of new creek and wetland habitat, improving water quality, and providing environmental education opportunities for the community and local schools. Additionally, modification of the flood control channel includes the construction of a water diversion gate control house. This small building will include a green roof, one of the first constructed by the City of Oakland, and plant-covered walls to deter graffiti and detain and clean stormwater runoff.

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Social Equity: Implementation of the Lion Creek Restoration Project will create an attractive public amenity within the newly constructed Lion Creek Crossings Park, providing recreation and educational opportunities to the local neighborhood of low and middle-income residents, and surrounding schools.

DISABILITY AND SENIOR CITIZEN ACCESS

The pedestrian pathway and bridge have been designed to comply with Americans with Disabilities Act regulations to facilitate access to and enjoyment of the project.

RECOMMENDATIONS AND RATIONALE

Staff recommends that City Council approve the resolution authorizing the City Administrator to enter into an Agreement with the District to formalize the partnership with the City and the District to implement the Lion Creek Restoration Project.

Staff also recommends that the City Council authorize the expenditure of an additional \$395,000.00 in Measure DD Creek Restoration funds to provide adequate funding for the City to complete the second phase of the project.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:

Michael Neary, P.E., Deputy Director
CEDA, Department of Engineering and Construction

Reviewed by:

Joel Peter, Measure DD Program Manager,
CEDA, Department of Engineering and Construction

Prepared by:

Lesley Estes, Watershed Program Supervisor
Watershed and Stormwater Management

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Attachment A: Cooperative Agreement between the Alameda County Flood Control and Water Conservation District and the City of Oakland

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ATTACHMENT A

Proposed Cooperative Agreement and Scope of Work
for Lion Creek Restoration Project

COOPERATIVE AGREEMENT
LION CREEK (ZONE 12 LINE J) RESTORATION PROJECT
OAKLAND, CALIFORNIA

This Cooperative Agreement (Agreement) is made this _____ day of _____, 2009, in the City of Oakland, State of California, by and between the City of Oakland, hereinafter referred to as "City" and the Alameda County Flood Control and Water Conservation District, hereinafter referred to as "District." City and District hereby agree as follows:

A. Purposes

1. The Lion Creek Restoration Project will create approximately 65,000 square feet of new meandering earthen creek and wetland through Coliseum Gardens Park, bypassing the existing concrete lined flood control channel Zone 12 Line J (also known as Lion Creek) , between Leona Creek Drive and vicinity of Lion Way; will provide mitigation for District dredging activities; and will widen an approximately 175 linear foot section of the existing concrete rectangular channel between Leona Creek Drive and (Union Pacific Railroad UPRR) to provide increased flood protection, hereinafter refer to as "Project."
2. The concrete lined channel is owned and maintained by the District. The District currently conducts maintenance activities, including removal of large debris and desilting of the channel, for the purpose of flood protection. The area of the new earthen creek channel and wetland is owned by the City of Oakland.
3. This portion of the Zone 12 Line J (Lion Creek) is a concrete lined rectangular channel, with two recently constructed vehicular bridge crossings at Lion Way which replaced Olmstead Street (currently abandoned), and at Leona Creek Drive upstream of UPRR. Zone 12 Line J (Lion Creek) was constructed in 1965 and designed to convey a 25-year design storm event, based on the land use condition and criteria used at the time.
4. The City received \$649,000 in mitigation funding and \$700,000 in grant funding and \$500,000 in local bond funds for a total contribution of \$1,849,000 to implement a restoration project within the Project limits. The goal of the Restoration Project is to create riparian and wetland habitat within the proposed 100-foot wide, approximately 650 linear foot reach of the creek while at the same time making the creek a public amenity with landscaping features and access for educational opportunities.
5. The meander of the proposed creek bypass, the shape of the channel and wetland area will be designed by the City's consultant, Philip Williams & Associates and Kleinfelder, based on hydrological data. The design will account for sediment transport through the system and appropriate erosion and deposition patterns to ensure maximum creek function. The new earthen creek and wetland, in conjunction with the existing concrete channel, will increase the flow capacity of the system from a maximum of 1,500 cfs to 1,900 cfs to provide additional flood protection over current conditions.

B. Scope of Project

The Project will involve removal of the roadway structural slab at abandoned Olmstead Street, construction of a diversion structure upstream of Lion Way, construction of the transition structure from the diversion structure to a new earthen creek, construction of a reach of meandering earthen creek and wetland, construction of a transition structure from the earthen creek to the concrete channel at Leona Creek Drive, and widening the concrete rectangular channel downstream of the new Leona Creek Drive to UPRR. In approximately the upper one-third of the reach, the project will recreate riparian habitat and creek banks stabilized and planted with a diversity of native plant species. Because the creek is influenced by tidal flows in approximately the lower two-thirds of the reach, the riparian area will transition to a tidal wetland environment and will be vegetated with a diversity of appropriate saltwater tidal wetland plant species.

District and City shall implement those activities for which they are each respectively responsible as described in Exhibit A, "Scope of Project," of this Agreement.

C. Indemnity Provisions

1. The City agrees to defend, indemnify, and hold harmless the District (with legal counsel reasonably acceptable to the District), its Board of Supervisors, its predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "District Indemnitees") from any and all acts, claims, liabilities and losses by whomever asserted arising out of City's performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the District Indemnitees.
2. The District agrees to defend, indemnify, and hold harmless the City, its council members, its predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "City Indemnitees") from any and all acts, claims, liabilities and losses by whomever asserted arising out of District's performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the City Indemnitees.
3. City shall include a provision in its design and construction contracts with the consultant(s), subconsultant(s), general contractor and its subcontractor(s) on the Project requiring the consultant(s), subconsultant(s), general contractor and its subcontractor(s) to indemnify District, to the fullest extent permitted by law, for damages resulting from the work of the consultant(s), subconsultant(s), general contractor and its subcontractors excluding indemnity for the sole negligence and/or willful misconduct of District. City shall also include a provision in the design and construction contract with the consultant(s), subcontractor(s), general contractor and its subcontractor(s) on the project requiring the general contractor to name District as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provision is on the City. Therefore, the City shall review the design and construction contract prior to bidding to ensure that such

provisions have been included in the draft of the bid documents. Consultant(s), subconsultant(s), general contractor(s), and its subcontractor(s) retained by the City shall defend (with legal counsel reasonably acceptable to the District), indemnify and hold harmless the District Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise out their performance associated with the City's activities as outlined in Exhibit A.

4. City shall include a provision in its construction contract with the general contractor to place in its subcontractors' construction contract and cause its subcontractors to agree to indemnity and insurance obligations in favor of District and other District Indemnitees in the exact form and substance of those contained in this Agreement in paragraph C3.

D. Employer/Employee Relationship

No relationship of employer and employee is created by this Agreement, it being understood that City and District shall act hereunder independently of one another; and that personnel employed or contracted by the City shall not have any claim under this Agreement or otherwise against District for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers' Compensation, or unemployment insurance benefits; civil service protection, or employee benefits of any kind; that City shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, Federal and State income taxes, and in connection therewith City shall indemnify and hold District harmless from any and all liability which City may incur because of City's failure to pay such taxes; that City does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of District is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

Personnel employed or contracted by the District shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers' Compensation, or unemployment insurance benefits; civil service protection, or employee benefits of any kind; District shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, Federal and State income taxes, and in connection therewith City shall indemnify and hold City harmless from any and all liability which District may incur because of District's failure to pay such taxes; that District does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

E. Amendments

If, during the term of this Agreement it becomes necessary to amend or add to the terms and conditions of this Agreement, such amendments or additions shall be approved by the governing boards of District and City. However, any specific interpretations of the provisions of this Agreement, may be made by and between District and City by means of a memorandum of understanding jointly executed by the Directors of Public Works of District and City, or by equivalent officials, and such memorandum or memoranda shall be deemed incorporated herein and be deemed of equal force and effect with any of the terms and conditions contained herein.

F. Conformity With Law and Safety

District and City shall each observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over the scope of services or any part hereof, including all provisions of the California Occupational Safety and Health Act, and all federal, state, municipal and local safety regulations. All services performed by each party to this Agreement must be in accordance with these laws, ordinances, codes, and regulations.

G. Term of Agreement

The parties in this Agreement agree to work together in the spirit of cooperation and good faith and shall use their best efforts to accomplish the particular obligations set forth herein. Whenever mutual agreement is provided for in this Agreement, no party shall unreasonably withhold their approval.

In the event of any disagreement concerning the interpretation or implementation of this Agreement, the parties shall make good faith efforts to resolve their differences, which efforts may include utilizing non-binding arbitration, with costs to be borne equally by the two contracting parties. Each party shall bear its own attorneys' fees and costs.

H. Insurance/Self Insurance

District and City are self-insured as to any questions under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

I. Workers Compensation

City is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at City's own cost and expense and further, neither City nor its carrier shall be entitled to recover from District any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

District is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at District's own cost and expense and further, neither District nor its carrier shall be entitled to recover from City any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

J. Choice of Law

This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

K. Notices

All notices required under this Agreement must be in writing, and may be given either personally or by registered or certified mail (return receipt requested), or by facsimile. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the parties at their address set forth below:

District

City of Oakland

Daniel Woldesenbet, Ph.D., P.E.
General Manager
399 Elmhurst Street
Hayward, CA 94544
Fax: (510) 670-5541

Lesley Estes
Watershed Program Supervisor
250 Frank Ogawa Plaza; Suite 4314
Oakland, CA 94612
Fax: (510) 238-7431

L. Execution

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT,

CITY OF OAKLAND,
a local public agency of the State of
California

By: _____
President, Board of Supervisors

By: _____
Dan Lindheim
City Administrator

Date: _____

Date: _____

Resolution No. _____ C.M.S.

Approved as to form:
Richard E. Winnie, County Counsel

Approved as to form:

By: _____
Deputy County Counsel

By: _____
Office of the City Attorney

Exhibit A - Scope of Project

District agrees to the following:

1. The District shall provide review of the environmental document prepared by the City for the Project and provide comments as appropriate. The District shall negotiate with the environmental regulatory agencies on the mitigation credits this Project will generate, retain all the mitigation credits negotiated, and apply them to this project and/or other future capital improvement projects located in District's Zone 12 that may require mitigations.
2. The District shall prepare and submit environmental regulatory permit applications for the Project, and make a good faith effort to negotiate and secure the necessary permits prior to beginning of construction. However, the progress may be delayed as a result of the review and issuance of the environmental permits by the environmental regulatory agencies. The City shall not lay claim against the District if the Project schedule is delayed or the City loses grant funding due to issuance of the necessary environmental permits by regulatory agencies.
3. The District shall provide review of the engineering documents prepared by the City's consultant for the Project and provide comments as appropriate. The Project shall not proceed unless the District grants written approval for the proposed creek restoration design plans and specifications, including channel widening and transition structures design.
4. The District shall include language in the construction contract document to require the contractor and sub-contractor(s) to name City of Oakland as additional insured.
5. The District shall be responsible for the advertisement of the Project for bids, evaluate bid results, award of a construction contract to the lowest responsible bidder, and provide surveying, construction testing and inspection, and contract administration. However, the progress of the Project may be delayed as a result of unreasonable and unacceptable high bids. The District will attempt to award a construction contract before the end of June 2009, and if successful, begin construction work by early July 2009. The City shall not lay claim against the District if the Project schedule is delayed or the City loses grant funding due to unacceptable high bids.
6. The District shall fund the technical analysis, soil studies, design, and engineering costs for the project elements benefiting the District including: concrete channel widening between Leona Creek Drive and UPRR, Transition Structures, in the amount not to exceed \$621,000. This amount shall be deducted from the City's share of Project cost due to District, upon District's award of a construction contract for the Project.
7. The District shall fund the estimated construction cost for the following portion of the Project, totaling \$2,610,000: water diversion and de-watering for the construction of the Project, widening of the existing concrete rectangular channel (on the left side, looking downstream) between UPRR and Leona Creek Drive (including modification of lateral pipe connection from Snell Street), connections to existing transition structures at the upstream end of UPRR and downstream end of Leona Creek Drive, modification of the existing concrete rectangular channel for the new transition structure upstream of Lion Way, excavation and grading of new earthen channel, removal of existing trees, reinforced concrete transition structure upstream of Leona Creek Drive, reinforced concrete transition structure downstream of Lion Way, rock slope protection, storm drain line shortening, storm

Exhibit A – Scope of Work

drain outfall modification and scour protection, construction and installation of an Obermeyer gate including SCADA upgrades and pre-fabricated housing, wrought iron fencing along flood control channel, south abutment and installation of new pedestrian bridge and demolition of the abandoned Olmstead Street bridge slab.

8. The District shall conduct a joint site walk through with City staff at the completion of the Project and identify punch list items, if any, related to the construction work performed.
9. Upon completion of the Project, the District shall be responsible to maintain the following:
 - a. Existing open concrete channel upstream of Lion Way, excluding the new reinforced concrete diversion structure and open concrete channel leading to the new earthen creek,
 - b. Entire reach of the existing concrete rectangular channel,
 - c. Widened concrete rectangular channels downstream of Leona Creek Drive,
 - d. Wrought iron fencing along flood control channel and gates installed above the headwalls at Leona Creek drive and Lion Way.
 - e. Obermeyer gate, SCADA upgrades and pre-fabricated equipment housing.

City agrees to the following:

1. The City shall assist District in the negotiation and securing of the environmental regulatory permits for the Project.
2. The City shall direct its consultant to perform design and preparation of contract plans, specifications and estimates, in accordance with the District requirements.
3. The City shall dedicate all mitigations credits earned by the City's Restoration Project to the District for use on District projects of the District's choosing.
4. The City shall be fully responsible and fund for all costs, including mitigation costs (if any), associated with the design and construction of the Project, excluding District's share of cost. The City shall also be responsible for the costs and work associated with post-construction maintenance of the earthen creek restoration site as required by the regulatory agencies. The post-construction maintenance period may last up to 10 years after construction of the Project.
5. The City shall be fully responsible for the performance of its consultant(s) and/or sub-consultant(s) associated with the evaluation and design of the creek restoration project.
6. The City, its consultants and subconsultants shall be responsible for the design of the following:
 - a. Proposed concrete rectangular channel widening between UPRR and Leona Creek Drive.
 - b. Diversion structure upstream of Lion Way crossing. The diversion structure shall have reasonably sized opening(s) to allow passage of low flow, taking into consideration potential silt and trash buildup in the front of the diversion structure opening(s). The final size of the diversion structure openings shall be approved by the District.

Exhibit A – Scope of Work

- c. A diversion berm or equivalent device shall be constructed across the existing concrete channel bottom, upstream of the new Lion Way crossing diverting channel low flow towards the diversion structure opening(s). City's consultant shall determine the maximum height of the berm that can be installed without affecting the final hydraulics analyzed (Philip Williams and Associates (PWA) hydraulic modeling memo dated February 6, 2006). The berm shall be designed in such a way that future maintenance effort and replacement cost will be at a minimum. The District shall have final approval rights on the final design of this device.
 - d. Gates shall be provided on the headwalls on the upstream and downstream side of Lion Way and downstream side of Leona Creek Drive crossings for maintenance access.
 - e. All other features associated with the creek restoration work.
7. The City shall fund the actual construction cost, based on the final progress payment to the Contractor, for the following portion of the Project: excavation and grading of the new earthen channel, reinforced concrete transition structure upstream of Leona Creek Drive, reinforced concrete transition structure downstream of Lion Way, rock slope protection, installation of pre-fabricated pedestrian bridge and south abutment, and tree removal. The City's share of construction costs for the District's project, based on the final Engineer's Estimate of \$358,649 shall be fully offset by the District's share of design costs of \$621,000.
 8. The City shall also deposit funds with the District in an amount no less than \$190,000, upon invoicing by the District for the following items: earthwork (\$135,000), rock weirs (\$15,000), dewatering (\$25,000) and temporary construction fencing (\$15,000), and following receipt by the City of payment for these services from its granting agency, California Department of Parks and Recreation
 9. The City shall also design, fund and construct the following portion of the Project: pedestrian bridge structure, pedestrian pathway adjacent to new earthen channel, seat wall adjacent to pedestrian pathway, landscaping of earthen channel and banks, plant replacement during establishment period, irrigation, interpretive signage, adaptive management and pedestrian bridge for a design cost of \$590,000 and construction cost of \$620,000.
 10. The City shall conduct a joint site walk-through with the District staff at the completion of the Project and identify punch list items, if any, related to the construction work performed.
 11. Upon successful completion of the creek restoration construction work, the City shall be fully responsible for all future maintenance work on the following:
 - a. reinforced concrete diversion structure upstream of Lion Way,
 - b. Entire reach of new concrete channel between the upstream reinforced concrete diversion structure and the culvert crossing under Lion Way,
 - c. Reinforced concrete culvert crossing under Lion Way,
 - d. New earthen creek between Lion Way and Leona Creek Drive, including rock slope protection,
 - e. Reinforced concrete box culvert crossing under Leona Creek Drive that connects to the new open creek,
 - f. All vegetation planted along the open earthen creek area,

Exhibit A – Scope of Work

- g. All surface drainage swales/ditches including field inlets and manholes, upstream of Leona Creek drive, within the Project limit
- h. Park underground drainage systems connecting to the existing concrete channel, including lateral outfall structures at earthen creek,
- i. Park landscape features including pathways, seatwall, and bridge.

Maintenance work within the new earthen creek shall include, but not be limited to, clearing of all debris, trash, sediment deposition, tree limbs and other foreign objects that may cause blockage in the front of reinforced concrete diversion structure and within the new open meandering earthen creek; trimming of vegetation that are hanging over the sides of concrete rectangular channel to minimize obstruction to creek flow; repairing creek banks and bottom caused by erosion or scouring; maintaining the design geometric cross sections of the restored creek to ensure the design capacity of the restored creek is not compromised.

- 12. The City shall be fully responsible for the proper land use and implementation of public safety features associated with the open access to the new open meandering creek within the Project limits.
- 13. The City shall be fully responsible for the performance of the new earthen creek including conveyance of the required design flow through the new upstream diversion structure and the new open meandering earthen creek configuration.

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OAKLAND

2009 JUN 11 PM 8:01

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND TO AUTHORIZE THE EXPENDITURE OF AN ADDITIONAL \$395,000.00 (THREE HUNDRED NINETY-FIVE THOUSAND DOLLARS) IN MEASURE DD CREEK RESTORATION FUNDS TO IMPLEMENT THE LION CREEK RESTORATION PROJECT

WHEREAS, City Council has directed staff to implement the Lion Creek Restoration Project per Council Resolution No. 78750 C.M.S. on July 20, 2004 authorizing the expenditure of \$500,000.00 in Measure DD funds, and Council Resolution No. 78816 C.M.S. on September 21, 2004 authorizing staff to apply for, accept, and appropriate \$500,000.00 in grant funds from the Habitat Conservation Fund Program of the California Wildlife Protection Act of 1990, and Resolution No. 79018 C.M.S. on January 18, 2005 authorizing staff to accept and appropriate \$549,000.00 in funds from Union Pacific Railroad and \$70,000.00 in funds from the Oakland Army Base, and Resolution No. 79485 C.M.S. on September 20, 2005 authorizing staff to apply for, accept and appropriate \$200,000.00 in grant funds from the Habitat Conservation Fund Program of the California Wildlife Protection Act of 1990; and

WHEREAS, the Lion Creek Restoration Project is integrally connected to and requires modifications to the Alameda County Flood Control and Water Conservation District (District) concrete flood control channel facility; and

WHEREAS, the District has agreed to participate as a project partner on the Lion Creek Restoration Project through contribution of technical analysis, engineering, design-review, construction services, and \$2,610,000.00 in funding; and

WHEREAS, a Cooperative Agreement (Agreement) is required to formalize the partnership between the City of Oakland (City) and District in order to define division of responsibilities for funding, construction, and maintenance; and

WHEREAS, the City and District have completed design of a two-phase project and the project is construction-ready; and

WHEREAS, the District has agreed to construct the first phase of the project including modifications to the flood control channel, installation of a pedestrian bridge, and grading of the new creek and wetland area; and

WHEREAS, the City will construct the second phase of the project including landscaping, a pedestrian path, and interpretive signage; and

WHEREAS, the City requires \$395,000.00 in Measure DD Creek Restoration funding to complete construction of the project; now, therefore, be it

RESOLVED: That the City Council authorizes the City Administrator or his designee to enter into an Agreement with the District to implement the Lion Creek Restoration Project; and be it

FURTHER RESOLVED: That the City Council authorizes the expenditure of \$395,000.00 in Measure DD Creek Restoration funding for the purposes of implementing the Lion Creek Restoration Project. When they become available, these funds will be expended from Measure DD Fund (5320) Watershed and Storm Water Program (88345), Creek Restoration DD Project (C244810).

IN COUNCIL, OAKLAND, CALIFORNIA, _____ 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California