

**COOPERATIVE AGREEMENT
COURTLAND CREEK RESTORATION PROJECT
BETWEEN ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT AND THE CITY OF OAKLAND**

This Agreement, hereinafter referred to as "AGREEMENT," made and entered into on the _____ day of _____, 2023, 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".

WITNESSETH

WHEREAS, Chapter 5 of Division 7 of the Government Code of the State of California authorizes and empowers two or more public agencies to jointly exercise by agreement any powers common to the contracting agencies; and

WHEREAS, the CITY and the DISTRICT are authorized by the acts governing them to engage in the contemplated activities; and

WHEREAS, the CITY received \$190,000 in mitigation funding, \$5,085,355 in grant funding, and \$1,331,535 in local bond and non-bond funds for a total contribution of \$6,449,941 to implement the Courtland Creek Restoration Project (the "PROJECT"); and

WHEREAS, the objective of the PROJECT is to protect and to restore an urban stream in Courtland Creek Park in the City of Oakland; and

WHEREAS, the DISTRICT owns and maintains, for the purpose of flood protection, the existing bifurcation structure along Line G on Courtland Creek; and

WHEREAS, the CITY and DISTRICT desire to coordinate and cooperatively implement the PROJECT and enter into an "AGREEMENT"; and

WHEREAS, the CITY will be responsible for all costs in designing, environmental permitting and constructing the PROJECT;

WHEREAS, the DISTRICT will be responsible in reviewing, approving, and granting permission for the addition of the concrete lip to the DISTRICT's bifurcation structure; and

WHEREAS, nothing herein is intended to change the ownership, responsibility, or liability for the Courtland Creek within DISTRICT's jurisdiction.

NOW, THEREFORE, it is mutually agreed as follows:

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SECTION I

TERM

This Agreement shall be effective as of the date first set forth above and shall continue in effect until the PROJECT is complete, unless earlier terminated as provided herein. The Project will be deemed complete upon the following occurring:

- (1) CITY's and DISTRICT's recording of a notice of completion for the PROJECT; and
- (2) All payments and reimbursements due have been received by CITY Consultants and Contractor.

SECTION II

CITY AGREES TO THE FOLLOWING:

- (1) The City shall direct its consultant to perform the design and preparation of contract plans, specifications, and estimates.
- (2) 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 Project.
- (3) The City, its consultants, and sub-consultants shall be responsible for the design of all features associated with the Project.
- (4) The City 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 the beginning of construction. However, the progress may be delayed as a result of the review and issuance of environmental permits by the environmental regulatory agencies.
- (5) The City shall be responsible for the advertisement of the Project for bids, evaluating bid results, award of a construction contract to the lowest responsible bidder, and providing 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 City will attempt to award a construction contract before the end of June 2023, and if successful, begin construction work by early July 2023.

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- (6) The City shall include language in the construction contract document to require the contractor and sub-contractor(s) to name the District as additional insured.
- (7) The City shall fund the technical analysis, design, and engineering costs for the Project.
- (8) The City shall fund the estimated construction cost for the Project, totaling \$3,140,000.
- (9) The City shall also be responsible for the costs and work associated with post-construction maintenance of the creek restoration site as required by the regulatory agencies. The post-construction maintenance period may last up to 10 years after the construction of the Project.
- (10) Upon completion of the Project, the City shall be responsible for the maintenance of the following in the Project area:
 - a. Native vegetation, invasive species management, periodic clearing of debris and trash.
 - b. Channel bank or bottom repair as necessary due to severe scour or erosion resulting from the newly graded channel.

SECTION III

DISTRICT AGREES TO THE FOLLOWING:

- (1) The District shall provide a review of the engineering documents prepared by the City's consultant for the Project and provide comments as appropriate.
- (2) Upon completion of the Project, the District shall be responsible to maintain the following:
 - a. Bifurcation structure owned by the District.

SECTION IV

MUTUAL INDEMNIFICATION:

- (1) Pursuant to Government Code Section 895.4, DISTRICT hereby agrees to indemnify, defend, assume all liability for and hold harmless CITY and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses and attorney's fees), environmental claims or bodily and/or personal injuries or death to any persons (collectively, "Claims"), to the extent arising out of or in any way connected with the CITY's PROJECT or DISTRICT's performance

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of this Agreement, except for any Claims caused by the sole negligence or willful misconduct of CITY. The provisions of this section shall survive the termination or expiration of this agreement; and

- (2) Pursuant to Government Code Section 895.4, CITY hereby agrees to indemnify, defend, assume all liability for and hold harmless DISTRICT, its Board of Supervisors, and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all Claims to the extent arising out of or in any way connected with the CITY's PROJECT or CITY's performance of this Agreement, except for any Claims caused by the sole negligence or willful misconduct of DISTRICT. The provisions of this section shall survive the termination or expiration of this agreement.
- (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 Commercial General Liability (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 SECTION II and in Exhibit A – Scope of Project.
- (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 indemnities in the exact form and substance of those contained in this Agreement in paragraph (4).
- (5) CITY agrees to indemnify the DISTRICT for any damage in the natural creek as a result of the CITY diverting more flow into the natural creek as a result of their modification of the DISTRICT's existing diversion structure.

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NO WAIVER:

- (6) No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

NOTICES:

- (7) Notices. Any notice or other communication (“Notice”) which either Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including via first class Certified Mail, personal delivery or overnight courier, to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. Any Notice shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, Certified and postage prepaid, return receipt requested, and on the next business day if sent via nationally recognized overnight courier.

DISTRICT: ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT
Attention: Hank Ackerman, Principal Civil Engineer
399 Elmhurst Street
Hayward, CA 94544

CITY: CITY OF OAKLAND
Attention: Terri Fashing, Acting Watershed and Stormwater Management
Division and DD Bond Manager
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

SEVERABILITY:

- (8) If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

AMENDMENT OF AGREEMENT:

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- (9) This Agreement may be amended by mutual agreement of the Parties. Any amendment shall be in writing and signed by all Parties.

TERMINATION:

- (10) CITY and DISTRICT reserve the right to withdraw from the PROJECT by providing written notice to the other Party of its intent to withdraw. Such notice shall be provided a minimum of five (5) business days prior to the date set for award of the contract for the PROJECT. At the expiration of the notice period, this Agreement shall be terminated. In the event of termination pursuant to this Section IV (7), both Parties shall bear their own costs incurred up to the effective date of termination. Notwithstanding the foregoing, any costs associated with non-cancellable obligations incurred by DISTRICT arising out of the CITY's PROJECT, including CITY's costs incurred prior to the date of termination, shall be reimbursed by CITY to DISTRICT; and
- (11) Except as provided in Section IV (7), neither Party may terminate this Agreement except due to an uncured material breach of the Agreement by the other Party. In the event of a material breach, the non-breaching Party must provide written notice of the breach to the breaching Party, and the breaching Party shall have thirty (30) calendar days from the date of the notice of material breach to cure. If the breach is not cured within the notice period, this Agreement shall terminate. In the event of termination pursuant to this Section IV (8), due to CITY's breach, CITY shall pay COUNTY for all costs incurred up to the effective date of termination, including costs associated with non-cancellable obligations and any outstanding CITY's Costs.
- (12) The obligations relating to indemnification in Sections IV (1) and IV (2) shall survive termination of the Agreement.

OTHER:

- (13) CITY or DISTRICT shall not delegate or assign its rights or otherwise transfer its obligations under the Agreement to any other person or entity without the prior written consent of the other Party.
- (14) The Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original, and all of which together shall constitute the same Agreement.
- (15) In the event of any dispute between the CITY's construction management personnel and the DISTRICT's construction management personnel or DISTRICT staff, the CITY shall submit its position in writing to DISTRICT. The DISTRICT shall review the CITY's

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comments, but shall have final say in any ultimate position taken with the construction contractor.

- (16) The Agreement shall be governed and construed in accordance with the laws of the State of California.

SIGNATURES ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized as of the day, month, and year first hereinabove written.

**ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT**

CITY OF OAKLAND

By: _____
Keith Carson, President
Board of Supervisors
County of Alameda, State of California

By: _____
Steven Falk, Interim City Administrator

Dated: _____

Dated: _____

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

APPROVED AS TO FORM AND LEGALITY:

By: _____
Kathy Lee, Deputy County Counsel

By: _____
Celso Ortiz
Deputy City Attorney
Office of the City Attorney
City of Oakland Council Resolution:

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Exhibits: Exhibit A – Scope of Project

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Exhibit A – Scope of Project

Within the Brookdale reach of Courtland Creek (Line G), the proposed design includes adding a 6-inch lip to the bifurcation structure to increase downstream flow in the main channel during baseflows without increasing the flow during peak storm flows. This would address a key project objective by keeping more flow during base flow conditions in the main channel. Concrete curb profile detail is shown on sheet C21 in the Project designs.

The following is the project scope for the Brookdale reach of the Project where the District bifurcation structure is located. This is provided for background purposes only.

The Brookdale reach of Courtland Creek is the most upstream reach and is located between Brookdale and Fairfax Avenues. This reach is characterized by deep incision, steep banks, and a dense canopy of non-native, invasive tree species including blue gum eucalyptus and black acacia. The invasive weed, *Arundo donax*, is also present in the one area of this reach that is not significantly covered by mature trees. The uniform, overly steepened banks threaten several homes on the north bank, where structures or paved areas are built very close to the edge of the bank. Water quality from storm and urban runoff, lack of light from the dense canopy, invasive plant species, and trash have been identified as primary limiting factors for ecological uplift in the reach.

The proposed project aims to remove invasive and non-native plant species, allowing more light in and open ground for native plant establishment; regrade banks to create shallower slopes; incorporate low floodplain terraces to support more varied native plant assemblages; increase baseflow in the creek, and remove trash. Approximately five to ten cubic yards (CY) of waste concrete pieces will be removed from the streambed in the upstream part of the reach. In the middle section of the reach, a chain link fence running near the bottom of the streambank and large embedded waste in the streambed (i.e., a large household appliance and large steel locker) will be removed.

Because of the steep incision in parts of the reach, banks would be regraded to create shallower slopes. These shallower slopes will be made possible by raising the bed of the stream through part of this reach, and placement of a boulder cascade at the downstream end of the grading to hold the raised bed material in place. The shallow slopes would be supported by bio-engineered techniques of mattress coir block (Bio-D blocks) to address erosion and slope failure. Bio-D blocks consist of coconut fiber coir fabric and backfill material and do not include any plastic or metal materials. Hydroseeding for erosion control would be used and may include bonded fiber matrix.

Revegetation with native riparian and woodland species will target enhancements for a variety of potential wildlife habitats and create a mosaic of shrub, mid-canopy and high canopy to support various nesting and foraging of a variety of bird species. The project would create a new trail alignment as well, with fencing created from eucalyptus trees milled on-site. Through incorporation of better public access, clear sightlines, and safety features (via invasive plant removal, the new trail alignment, and fencing), the project aims to discourage illegal dumping and homeless encampments, which may decrease trash accumulations and other attractive nuisances.

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The metal guard rail at the upstream end of Brookdale Avenue will be replaced with pinned eucalyptus logs, and informal overlooks will be constructed. The project will include a boulder cascade structure and stream substrate placed in the channel.

The proposed project includes two floodplain terraces in the Brookdale reach. The terraces sit on the left bank, with the channel to the right. The terraces are constrained by the existing trail and the retaining wall in the Brookdale reach, as well as by the need to maintain a 1.5H:1V slope where grade is being cut. The terrace elevations were based on the existing conditions' water surface elevations from the target 2-year flow event.

Habitat features will be constructed in and along the channel. A boulder cascade, with one vertical drop of four (4) feet and laid at a 2.5H:1V slope, will be constructed in the channel to support the raised bed of the stream and soften the over-steepened adjacent banks. This structure will be 8 feet wide at its widest point and stretch approximately 50 feet upstream, starting approximately 5 feet upstream of the District property line. It will require 309 CY of fill, composed of engineered streambed, rock, and native soil. Imported 2-foot boulders chosen to match local materials will be placed in the channel bed to form the cascade structure. Engineered streambed material, consisting of gravel and fines, will be injected to fill boulder voids and to fill the portion of channel upstream of the boulder cascade.

Bio-engineered bank stabilization methods employed in this reach (and others) will include Bio-D blocks. Bio-D Blocks consist of coconut-fiber coir fabric and backfill material. They are to be installed in lifts to stabilize the channel toe and slopes near the cascade structure and floodplain terraces and will have willow pole cuttings placed between each lift to revegetate the streambank. Up to two courses of 24" rock will be installed at the toe of the stream bank at the upstream end of the Brookdale reach immediately downstream of the culvert mouth for approximately 35 linear feet on the left bank and 15 linear feet on the right bank. Existing waste chunks of concrete stabilize the bank toe in this area and removal of this concrete revetment is impossible due to numerous constraints (e.g., working width, unacceptable slope destabilization, presence of a large native oak tree). The toe rock installation will buttress the existing toe and prevent further human removal of individual pieces of concrete which is currently having a deleterious effect on the streambank.

While this reach of Courtland Creek is generally dry during the summer construction season, the project will require work in the streambed. While we do not expect to need a dewatering system due to the intermittent flow in Courtland Creek, if the channel is flowing during the late summer construction season, a dewatering system will be constructed to enable work within the streambed.

Staging of equipment and materials would take place on the uphill side of the trail away from the channel in the Brookdale Reach.