

**AGREEMENT RELATED TO THE CLEAN CREEK PROGRAM
AND THE COLLABORATIVE CREEK IMPROVEMENT
PROGRAM**

THIS AGREEMENT is made and entered into this March 2, 2021, by and between the Alameda County Flood Control and Water Conservation District (“District”) and the City of Oakland (“City”). The District and the City are sometimes referred to herein as the “parties”:

WITNESSETH:

WHEREAS, the District owns and maintains flood control facilities within the area designated as Zone 12 which includes, in part, the area of the City; and

WHEREAS, the District and the City wish to coordinate efforts in order to more effectively and efficiently comply with the federal Clean Water Act (1972), protect, and enhance water quality, and to provide for flood control measures within Zone 12;

NOW, THEREFORE, the District and the City agree to the following:

1. Collaborative Creeks Program

1.1. Upon receipt, review and approval by the District of an invoice or other documentation confirming the performance of services under this Agreement, the District will reimburse the City from available Zone 12 funds the City’s actual cost incurred for the Collaborative Creeks Program, including enforcement and compliance, creek restoration project support, and watershed protection activities as described in Exhibit A, which is incorporated by reference herein, for District projects that are within Zone 12.

1.1.1. Payment for the Collaborative Creeks Program shall be based on actual costs in an amount that is not to exceed \$1,260,000.

2. Clean Creeks Program

2.1. Upon receipt, review and approval by the District of an invoice or other documentation confirming the performance of services under this Agreement, the District will reimburse the City from available Zone 12 funds the City’s actual cost incurred for the implementation of the Clean Creeks Program as described in Exhibit A for District projects that are within Zone 12.

2.1.1. Payment for the Clean Creeks Program shall be based on actual costs in an amount that is not to exceed \$420,000.

3. Term

3.1. The term of this agreement is from March 2, 2021 through June 30, 2026.

4. Not to Exceed Amount

4.1. The total amount due to City from District under this Agreement shall not exceed \$1,680,000.

5. Indemnification

5.1. The City agrees to defend, indemnify, and hold harmless the District (with legal counsel reasonably acceptable to the District), the County of Alameda, their Boards of Supervisors, their 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.

6. Conformity With Law and Safety.

6.1. City shall 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 City must be in accordance with these laws, ordinances, codes, and regulations.

7. Audit.

7.1. City shall make available to District, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the District either in the form of deductions from amounts placed on deposit with City for use for work performed, and shall furnish to District, its authorized agents, officers or employees such other evidence or information as District may require with regard to any such expenditure or disbursement charged to District.

7.2. City shall maintain full and adequate records in accordance with District requirements to show the actual costs incurred by City in the performance of this Agreement. City shall provide such assistance as may be reasonably required in the course of such inspection. District further reserves the right to examine and reexamine said books, records and data during the five (5) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by City, and City shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for five (5) years after District makes the final or last payment or within five (5) years after any pending issues between the District and City with respect to this Agreement are closed, whichever is later.

8. Termination.

8.1. The District has and reserves the right to suspend, terminate, or abandon the execution of any work by the City without cause at any time upon giving to the City prior written notice. In the event that the District should abandon, terminate, or suspend the City's work, the City shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B, attached hereto and incorporated by reference herein, provided that the maximum amount payable to City shall not exceed the not-to-exceed amounts set forth in this agreement for services provided hereunder prior to the effective date of said suspension, termination or abandonment. The obligations of this Agreement, which by their nature would continue beyond the termination of the Agreement, including without limitation, the obligations regarding indemnification, shall survive termination.

9. Notices.

9.1. 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:

9.1.1. District: Sharon Gosselin; ACPWA; 399 Elmhurst Street; Hayward, CA; 94544

9.1.2. City: Kristin Hathaway; City of Oakland; 250 Frank Ogawa Plaza Suite 4314; Oakland, CA 94612

10. Employer/Employee relationship.

10.1. 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; 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 defend, indemnify and hold District harmless (with legal counsel reasonably acceptable to the District) from any and all liability which District 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.

11. Ownership of Documents.

- 11.1. Any interest (including, but not limited to, property interests and copyright interests) in drawings, plans, specifications, studies, reports, memoranda, or other documents (including but not limited to, electronic media) prepared under this Agreement shall become the property of and will be transmitted to District at the conclusion of this Agreement. City may, however, retain one copy for its files and shall have an unrestricted right to reuse standard drawings, details, specifications and other related documents and the right to reuse portions or the information contained in them which are incidental to the project.

- 11.2. Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event that it is ever determined that any works are not Works for Hire, City hereby assigns all copyrights to such works to District.

12. Workers Compensation.

- 12.1. 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.

13. Counterparts.

- 13.1. This agreement may be executed in counterparts, each of which shall be an original and both of which shall constitute one and the same agreement.

14. Choice of Law.

- 14.1. 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.

15. Merger, Severability, Third-Party Beneficiaries.

- 15.1. This Agreement, together with other agreements specifically described or contemplated herein, represents the complete understanding of the parties with reference to the subject matter hereof. If any clause of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will continue in force to the extent reasonably necessary to give effect to the parties' intent in entering into this Agreement. There are no intended third-party beneficiaries contemplated by the parties in entering into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter set forth.

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Keith Carson
President, Board of Supervisors

Date: _____

APPROVED AS TO FORM:
Donna Ziegler, County Counsel

BY: _____
Kathy Lee, Deputy County Counsel

CITY OF OAKLAND

By: _____
Sabrina B. Landreth,
City Administrator

Date: _____

APPROVED AS TO FORM:
City Attorney

BY: _____

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.

EXHIBIT A: SCOPE OF SERVICES

SUMMARY

The Alameda County Flood Control District (District) owns and maintains flood control facilities within the area designated as Zone 12 which incorporates, in part, the area of the City of Oakland. Through the Collaborative and Clean Creeks Agreement (Agreement), the City of Oakland (City) will assist the District in the protection of District facilities. This Agreement will also help the District provide for flood control measures within Zone 12 and more effectively and efficiently comply with the Clean Water Act/NPDES Permit requirements to protect and enhance water quality. This scope of services includes creek restoration project support, enforcement and compliance, watershed protection, and creek cleanup volunteerism and outreach services to be performed by the City for the benefits described in this summary.

SERVICES TO BE PROVIDED

I. *COLLABORATIVE CREEKS*

CREEK RESTORATION PROJECT SUPPORT

The City will perform the following activities for projects where the District and the City are partners, where the City implements a restoration project on a District line, and/or where a restoration is in an area that will benefit a District facility:

Grant Writing

- Research and write grants to prospective funding sources for creek restoration projects.
- Conduct field visits and assist the District with presentations necessary to obtain funding.
- Assist the District with the administration of grants and necessary reporting and correspondence with funding agencies.
- Assist the District with the tracking and completion reports required by funding agencies.

Community Liaison Assistance

- Contact stakeholder organizations and individuals to expand support and participation in the project planning process.
- Coordinate public meetings to gain community input.
- Attend meetings of creek, watershed, and community groups to facilitate communications.
- Write, layout and mail the announcements for public meetings.
- Coordinate the development and distribution of educational materials.
- Conduct media relations regarding restoration and improvement projects, i.e. write press releases and public service announcements, pitch stories to appropriate media outlets on behalf of the District.
- Coordinate media events to celebrate project completion on behalf of the District.

Project Coordination Assistance

- Coordinate with community organizations and neighborhood groups.
- Coordinate with various City departments for permitting, project implementation, park closures, etc.
- Coordinate appropriate regulatory permits for each restoration project.
- Assist District with request for proposal (RFP) processes, including reviewing scopes and serving on selection panels.

Project Monitoring and Maintenance Assistance

- Develop monitoring protocol for restoration projects in accordance with funding and permit requirements.
- Track and complete monitoring reports necessary for permitting agencies.
- Develop appropriate operations and maintenance plans for each restoration project and help coordinate maintenance efforts.

Mitigation Credits

- Work with regulatory agencies to help the District obtain mitigation credits for activities sponsored and funded by the District under this agreement.

ENFORCEMENT AND COMPLIANCE

The City will perform the following activities to respond to reports of illegal dumping, improper vegetation management (including clearing and dumping), illicit discharges, and issues of erosion on creek-side properties and give the highest priority to calls from the District regarding District-affected facilities, including illegally dumped materials within 500 ft. of a waterway:

Evaluate Sites

- Respond to calls regarding illegal dumping, vegetation removal and erosion on creek-side properties (District calls are given priority and the City shall respond to such calls within one business day).
- Conduct initial inspection to clearly identify the issue(s).
- Determine the responsible party and contact them to inform them of the issue/violation(s).
- Determine appropriate next actions and next steps to resolve the issue.
- Meet with the responsible party at the site to inform them of the appropriate actions to resolve the issue and meet compliance in the case of a violation.

Enforcement

- Initiate a formal enforcement action by notifying the property owner in writing informing them of the fines and fees that may be incurred if the violation is not rectified within a specific time period.
- Monitor compliance efforts and work closely with the City's Code Enforcement when necessary to ensure compliance and when possible have issue resolved at the City's cost and then place liens on the property to retrieve expenses.

- Coordinate with other regulatory agencies when appropriate (i.e. California Department of Fish and Wildlife, Army Corps of Engineers, Regional Water Quality Control Board, San Francisco Bay Conservation and Development Commission).

WATERSHED PROTECTION

The City will perform the following tasks to help protect watersheds and receiving waters:

- Provide assistance and/or instructions to creek-side property owners to encourage practices that prevent adverse impacts to District facilities. Assistance may include planning and permitting guidance, technical assistance, educational workshops, providing instructional materials on erosion-control, trash control, vegetation management, stormwater detention, or other assistance to ensure residents understand their legal responsibilities to keep their creek clean and protected. Communication with property owners will not extend beyond the limitation of public agencies' ability to provide assistance on private property.
- Work with the City's Department of Planning and Building on Creek Protection Permit issues that could impact District facilities.
- Work with the City's Public Works Design and Construction Bureau on construction issues near creek-side properties, storm drain issues, and stormwater detention and maintenance projects that could impact District facilities.
- Work with City's Public Works Drainage Division on issues related to vegetation management in creeks, storm drainage and overflow from creeks. The City maintains approx. 11,000 inlets per year and 150 trash racks.
- Provide Oakland Parks, Recreation, and Youth Development (OPRYD) and Oakland Public Works Parks Maintenance (Parks maintenance) staff with Best Management Practices for creek-side areas and sensitive habitat.
- Work with the City's Homeless Encampment Management Team to prioritize debris mitigation near creeks, especially debris that could impact District facilities.
- Work with the Oakland Fire Department (OFD) to encourage implementation of proper vegetation management techniques by creek-side property owners for creek-side and sloped properties to prevent management activities that could impact District facilities.
- Provide technical guidance to help OFD vegetation inspectors identify creek-side and sensitive habitat in order to provide appropriate direction to owners of those properties.
- Offer training for OFD vegetation inspectors and vegetation removal contractors working for the City of Oakland to avoid mismanagement of vegetation that could impact District facilities.
- Provide information on the City's website about creek and watershed protection, the Creek Protection Ordinance, and links to the District's website as well as other helpful resources for creek-side residents.

II. CLEAN CREEKS

Community Creek Efforts

The City will support creek adoptions, including: producing outreach materials; recruiting community creek adopters; working with adopters to design and implement projects; and providing tools and debris pickup services. Provide specialized, as-needed support to new adopters and other volunteers.

Citywide Creek Cleanup Events

The City will plan and host semi-annual citywide cleanup and beautification events on Earth Day in April and on Creek to Bay Day in September. These events will include creek and shoreline cleanups, as well as upstream on-land cleanups. Produce event outreach and publicity; provide training for community site coordinators; coordinate staging locations with community site coordinators; provide tools and trash and green waste pickup services; and coordinate with District maintenance staff for cleanup of District facilities.

The City will maintain a community outreach database of residents, schools, community organizations, churches and other stakeholders and include all contact information, e-mail, phone, address, and a contact name.

Creeks Website

The City will maintain creek-related web pages on the City of Oakland website, with information about: creek adoption and other volunteer opportunities; outreach materials; event updates; and links to other informative websites.

Press

The City will draft and disseminate periodic press releases promoting upcoming events and highlighting local creek activities.

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The City will provide the District with bi-annual and annual reports that will be due on a mutually agreed upon schedule.

Work shall be performed only after a written action plan has been approved in writing by both the District and City, specifying the tasks to be performed under this Scope of Work, and the DISTRICT has provided the City with a written Notice to Proceed.

EXHIBIT B: PAYMENT OF SERVICES

PAYMENT FOR SERVICES PROVIDED:

- The District will reimburse the City for all staff labor, materials, and expenses incurred in the proper execution of this Agreement up to the not-to-exceed amounts specified herein.
- All invoices shall include hours worked, employee classification and pay rate, and copies of all receipts for all materials and expenses. Payment will not be made without proper documentation of costs.
- Each invoice shall be accompanied by a narrative describing the work performed in each task area for the period covered by the invoice.