

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (DISTRICT)

DISCLAIMER OF LIABILITY AND WARRANTIES – DATA SHARING Attachment C

USER acknowledges that the data described below is furnished by the Alameda County Flood Control and Water Conservation District (DISTRICT) solely as an accommodation to USER, and, therefore, agrees as follows:

USER recognizes that electronic files can be readily corrupted or altered by storage conditions, viruses, or users beyond the control of DISTRICT and that the usefulness, accuracy, and integrity of electronic files are dependent upon the software used to access or utilize the data contained in the file(s). In addition, USER understands and agrees that it is quite possible that errors and omissions will occur in data input and/or computer programming done by DISTRICT or others to provide the data in the form desired, that files may be out of date or otherwise inaccurate, and USER further understands and agrees that it is highly probable that errors and omissions will occur in any recordkeeping process, especially when large numbers of records are developed and maintained, and that the data may not meet USER’s standards as to accuracy or completeness. USER agrees to accept the data “as-is,” fully expecting that there may well be errors and omissions in the data obtained from DISTRICT.

USER further understands and agrees that DISTRICT makes absolutely no warranty whatsoever, whether express or implied, as to the accuracy, thoroughness, value, quality, validity, merchantability, suitability, condition, or fitness for a particular purpose of the data or any programming used to obtain the data, nor as to whether the data is error-free, up-to-date, complete, or based on accurate or meaningful facts. USER agrees that its use of the data, including USER’s provision of the data to any other entity, business, or individual, is at USER’s sole risk.

USER further understands and agrees that it forever waives any and all rights, claims, causes of action, or other recourse that it might otherwise have against the County of Alameda or the DISTRICT for any injuries or damages of any type, whether direct, indirect, incidental, consequential or otherwise, resulting from or in any manner arising out of or related to this agreement or the data provided hereunder. USER agrees that DISTRICT shall not be liable to USER for any liability, claim, loss, damage, injury or expense of any kind caused or alleged to be caused, directly or indirectly, by the inadequacy of any of the transmitted data or any other deficiency of the systems, by any delay or failure to provide any service, or by any other interruption, disruption, or loss of USER operations.

USER’S INDEMNIFICATION

USER acknowledges that its use of the data may be subject to other laws, such as, but not limited to, copyright law, the Professional Engineers Act, and the Professional Land Surveyors Act. USER represents that it will comply with all applicable laws in using the data.

To the extent permitted by law, USER hereby agrees to defend, save, hold harmless, and indemnify the County of Alameda and the DISTRICT and their officers, officials, employees, and agents against claims by anyone for any loss, injury, damage, risk, cause of action, or liability of any type (including legal fees) relating to or arising out of USER’s receipt or use of this data.

If a court of competent jurisdiction holds any provision of this agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of the agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

Description of data: Storm Drainage GIS geodatabase, and hydrologic and hydraulic models for Zone No. 12

It is understood and agreed by USER and DISTRICT that this agreement covers the drainage model data, and associated files developed for the District's Zone 12 Drainage Master Plan. USER may add additional refinement as deemed appropriate, append City’s smaller drainage network into the District's Zone 12 models, and transfer the models and all its associated files back to the DISTRICT for reference.

As part of this coordinated effort, USER and DISTRICT agreed and understood that they will have full access to the model data and information during the study phase with no limitations.

This agreement shall remain in full force until the completion of the City drainage master plan study and transfer of all its model data back to the DISTRICT. However, DISTRICT may terminate and/or replace this agreement upon prior written notice to USER.

The undersigned agrees on behalf of himself/herself, and as authorized representative of USER, to the foregoing terms, as consideration for the receipt of the above-referenced data from DISTRICT.

USER: **CITY OF OAKLAND**

Name

Signature

City Administrator

Title

Date