

**AGREEMENT BETWEEN THE  
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT  
AND THE COUNTY OF SAN MATEO**

This Agreement is entered into by and between the San Mateo County Flood and Sea Level Rise Resiliency District, an independent special district (“District”), and the County of San Mateo, a political subdivision of the State, hereinafter referred to as “County” or “Contractor” (together, the “Parties”), effective October 1, 2023.

**Recitals**

- A. WHEREAS, the County Board of Supervisors previously acted as the governing board, and the County's Department of Public Works Director and staff served as *ex officio* staff, of the San Mateo County Flood Control District; and
- B. WHEREAS, the San Mateo County Flood Control District and the Enhanced Flood Program had undertaken a number of flood-related projects and works in various flood control zones (“Flood Zones”), several of which are still in progress or otherwise ongoing; and
- C. WHEREAS, pursuant to the San Mateo County Flood and Sea Level Rise Resiliency District Act (2019) (“Act”), effective January 1, 2020, the San Mateo County Flood Control District has been renamed the San Mateo County Flood and Sea Level Rise Resiliency District; its purpose has been revised to include, *inter alia*, addressing the impacts of sea level rise; and the governing board of the District is a board of directors appointed pursuant to the Act; and
- D. WHEREAS, the District desires to contract with the County to continue the management and operations of the Flood Zones and to support the District's long-term operations by providing engineering services for the management and operations of the Flood Zones and flood-related projects in the Flood Zones; and
- E. WHEREAS, the County desires to enter into an agreement with the District to provide the necessary staffing, advice, and expertise to perform said work.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. **Exhibits.** The following exhibits are attached to this Agreement and incorporated by this reference:

Exhibit A—County Department of Public Works Scope of Services  
Exhibit B—Payment Terms

2. **Services to be performed by County.** In consideration of the payments set forth herein in Exhibit B and the services and rates set forth in Exhibit A, County shall perform services for District in accordance with the terms, conditions, and specifications set forth herein.

3. **Payments to County.** In consideration of the services provided by County in accordance with all terms, conditions and specifications set forth herein and described in Exhibit A, District shall make payment to County based on the rates outlined herein and in the manner specified in Exhibit B. District reserves the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable. In no event shall District's total fiscal obligation under this Agreement exceed four million, eight hundred and seventy thousand dollars and zero cents (\$4,870,000.00).

4. **Term.** Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 1, 2023 through June 30, 2024, with an option to extend through June 30, 2025, upon mutual consent.

5. **Standard of Care.** As a material inducement to District to enter into this Agreement, Contractor hereby represents that it has the qualifications and experience necessary to undertake the services to be provided pursuant to this Agreement, and will perform the services to a standard of reasonable professional care, for similar services on similar projects of like size and nature performed.

6. **Standard of Performance.** Contractor shall perform all work to the recognized professional standards relating to services provided and pursuant to the above stated Standard of Care. Contractor hereby covenants that it shall follow the professional standards used by a competent practitioner in performing all services required hereunder.

7. **Termination.**

(a) This Agreement may be terminated by Contractor or by District at any time without a requirement of good cause upon ninety (90) days' advance written notice to the other party. Contractor shall be entitled to receive payment for services provided prior to termination of the Agreement.

(b) District may terminate this Agreement or a portion of the services referenced in the Exhibits based upon the unavailability of Federal, State, or other outside funds by providing written notice to Contractor as soon as is reasonably possible after District learns of said unavailability of outside funding.

(c) This Agreement may be terminated by Contractor or by District for cause, which is separate from the ability to terminate without cause as described above. In order to terminate for cause, the terminating party must first give the other party notice of the alleged breach. The receiving party shall then have 10 calendar days after receipt of such notice to cure the alleged breach. If the receiving party fails to cure the breach within this period, the terminating party may immediately terminate this Agreement without further action.

8. **Contract Materials.** Upon expiration or termination of this Agreement, all finished or unfinished work products, documents, data, studies, maps, photographs, and other materials and efforts conducted by Contractor under this Agreement shall become the property of District and shall be promptly delivered to District. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

9. **Relationship of Parties.** Contractor agrees and understands that the work and services performed under this Agreement are performed as an independent contractor and not as an employee of District and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of District employees.

10. **Mutual Hold Harmless.** Pursuant to Government Code section 895.4, each party agrees to fully indemnify, defend, and hold the other party (including its appointed and elected officials, officers, employees, and agents) harmless from any damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its appointed or elected officials, officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such party under this Agreement. No party, nor any appointed or elected official, officer, employee, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its appointed or elected officials, officers, employees, or agents, under or in connection with any work, authority, or jurisdiction delegated to such other party under this Agreement.

In the event of concurrent negligence of County, its officers, contractors, agents, and/or employees, and District, its officers, contractors, agents, and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property, which arise out of terms and conditions of this Agreement, shall be apportioned according to the California theory of comparative negligence.

**11. Assignability and Subcontracting.** Contractor shall not assign this Agreement nor any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of District. Any such assignment or subcontract without District's prior written consent shall give District the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**12. Payment of Permits/Licenses.** Contractor bears responsibility to obtain any license, permit, or approval required from any agency for services to be performed under this Agreement at Contractor's own expense prior to commencement of said services. Failure to do so will result in forfeit of any right to compensation under this Agreement. Contractor's costs associated with obtaining such licenses, permits or approvals from agencies, including but not limited to Contractor staff time and fees charged by such agencies, are eligible for reimbursement through the invoicing process set forth in Exhibit B. Costs associated with professional licenses obtained by Contractor staff that are required by law in order to perform the services under this Agreement to all recognized applicable professional standards and pursuant to the above stated Standard of Care are not eligible for reimbursement.

**13. Insurance.**

(a) Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by District. Contractor shall furnish District with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to District of any pending change in the limits of liability or of any cancellation or modification of the policy.

(b) During the term of this Agreement, Contractor shall have in effect workers' compensation and employer's liability insurance providing full statutory coverage, as required by Section 1861 and Section 3700 of the California Labor Code.

(c) During the term of this Agreement, Contractor shall take out and maintain such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Comprehensive General Liability.....	\$2,000,000
Motor Vehicle Liability Insurance.....	\$1,000,000
Professional Liability.....	\$1,000,000

District and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (i) the insurance afforded thereby to

District and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (ii) if District or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

(d) County shall have the right to self-insure with respect to any of the insurance requirements required under this Agreement, to the extent permitted by applicable law. If County elects to self-insure, County shall give District prompt written notice of any significant change in or the depletion of its self-insurance fund. Notwithstanding the foregoing, County is also responsible for causing any permitted contractors, subcontractors, and/or agents to maintain commercially reasonable insurance coverages and coverage limits as required under this Agreement.

(e) In the event of the breach of any provision of this section, including receipt of a notice indicating required insurance coverage will be diminished or cancelled, notwithstanding any other provision of this Agreement to the contrary, District may immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**14. Compliance With Laws.** All services to be performed by County pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations. Such services shall be performed in accordance with appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. County will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**15. Prevailing Wage.** When applicable, Contractor hereby agrees to pay not less than prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2- Wages, Chapter I, Part 7, Division 2, Section 1770 et seq. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works, and available at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR) or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

**16. Non-Discrimination.** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

**17. Retention of Records; Right to Monitor and Audit.**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after District makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by a Federal grantor agency, the State and/or District.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by all applicable Federal, State, and local agencies and as required by District.

(c) Contractor agrees upon reasonable notice to provide to District or its authorized representative, to any Federal or State department having monitoring or review authority, and/or to any of their respective

audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**18. Merger Clause; Amendments.** This Agreement, including all Exhibits and other attachments incorporated by reference, constitutes the sole Agreement of the Parties and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or other attachment, the provisions of the body of the Agreement shall prevail. Any prior Agreement, promises, negotiations, or representations between the Parties not expressly stated in this Agreement are not binding. All subsequent modifications or amendments of the Agreement shall be in writing and signed by the Parties.

**19. Controlling Law; Venue.** The validity of this Agreement and of its terms, the rights and duties of the Parties, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**20. Notices.** Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (a) transmitted via email to the email address listed below; and (b) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of District, to:

Name/Title: Chief Executive Officer  
Address: 1700 South El Camino Real, Suite 502, San Mateo, CA 94402  
Email: info@OneShoreline.org

In the case of Contractor, to:

Name/Title: Director of Public Works  
Address: 555 County Center, 5<sup>th</sup> Floor, Redwood City, CA 94063  
Email: astillman@smcgov.org

**21. Confidentiality.** Contractor, in the course of its duties, may have access to financial, accounting, statistical, and personal data of private individuals and employees of District. Contractor covenants that all such confidential data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement shall not be disclosed by Contractor without written authorization by District. District shall grant such authorization if disclosure is required by law. Upon request, all District data shall be returned to District upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement. It is hereby agreed that the following information is not considered to be confidential under this Agreement:

- a. Information already in the public domain;
- b. Information disclosed to Contractor by a third party who is not under a confidentiality obligation;
- c. Information developed by or in the custody of Contractor before entering into this Agreement;
- d. Information developed by Contractor through its work with other clients; and

- e. Information required to be disclosed by law or regulation, including, but not limited to, the California Public Records Act or subpoena, court order or administrative order.

**22. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by District of any payment to Contractor constitute or be construed as a waiver by District of any breach of this Agreement, or any default which may then exist on the part of Contractor, and the making of any such payment by District shall in no way impair or prejudice any right or remedy available to District with regard to such breach or default.

**23. Electronic Signatures.** The Parties wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law.

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In witness of and in Agreement with this Agreement's terms and conditions, the Parties, by their duly authorized representatives, affix their respective signatures:

**For County of San Mateo:**

\_\_\_\_\_  
Ann M. Stillman  
Director of Public Works

\_\_\_\_\_  
Date

**For District:**

  
\_\_\_\_\_  
Len Materman  
Chief Executive Officer

August 29, 2023  
\_\_\_\_\_  
Date

## **Exhibit A – County Department of Public Works Scope of Services**

The following is a description of engineering services provided by the Department of Public Works for the San Mateo County Flood and Sea Level Rise Resiliency District (District) on a time and materials basis. Activities listed below are anticipated for the continued maintenance and operations of the Flood Zones' constructed or funded infrastructure while previously governed by the County of San Mateo Board of Supervisors, but may not include all activities required or requested to maintain operations.

### **General Work for all District-managed Flood Zones**

#### **Activities:**

- Assist with preparation of budgets related to the anticipated costs and expenditures to be incurred by County
- Assist with budget monitoring
- Assist with establishing project number budgets
- Assist with the Municipal Regional Permit (MRP) reporting for all District-managed Flood Zones
- Attend City/County Association of Governments (C/CAG) stormwater meetings as required and necessary for MRP compliance and reporting purposes
- Attend or participate in Bay Area Integrated Regional Water Management Plan (BAIRWMP) activities and meetings as appropriate
- Obtain any permitting, licenses or approvals from regulatory agencies for Flood Zone work as provided in Paragraph 13 of Agreement.
- Provide comments on behalf of the District on environmental documents for projects within all District-managed Flood Zones as necessary and appropriate
- Respond to illicit discharge reports within all District-managed Flood Zones if spill reaches a District-maintained segment of flood channel
- Review Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) updates, Letter of Map Amendment/Conditional Letter of Map Amendment (LOMA/CLOMA), Letter of Map Revision/Conditional Letter of Map Revision (LOMR/CLOMR) for properties within all District-managed Flood Zone boundaries as requested from County Planning & Building Department for properties in unincorporated areas
- Respond to data and information requests as appropriate
- Respond to inquiries (phone calls, emails, etc.) from property owners/public on FEMA FIRM designations, creek ownership, drainage issues

### **Colma Creek Flood Zone (CCFZ)**

#### **Activities:**

- Work in compliance with and as required by the maintenance permit for Colma Creek Flood Channel (Channel), including preparing relevant agency notifications and reporting
- Perform plan review and provide comments on proposed projects, which may include review of hydraulic modeling results
- Construction observation and inspection of work in CCFZ right-of-way/easements and repair/replacement of flood protection facilities
- Perform quarterly inspections of the Channel with City of South San Francisco (SSF) and Town of Colma (Colma) and document identified items of work
- Inspections after major storm events
- Coordinate as necessary regarding homeless encampments

- Facilitate the maintenance, monitoring, clean-up, and planting at the five existing mitigation sites required by regulatory agencies to mitigate for impacts from previous construction projects completed by the CCFZ, and prepare any required annual reporting
- Facilitate required maintenance dredging as needed
- Coordinate maintenance to be performed within SSF and Colma
- Respond to illicit discharge reports within watersheds that reach Colma Creek
- Provide information to be included in documents presented to the Colma Creek Citizens Advisory Committee at their quarterly meetings
- Facilitate the hydrologic and hydraulic modeling of the watershed and creek when necessary
- Coordinate and facilitate inspections and recommendations for work for the various concrete box culverts along the Channel
- Manage the planning, design, environmental, permitting, and construction of capital improvement projects or emergency work
- Assist with existing or proposed easements, CCFZ owned property, and CCFZ lease agreements
- Participate as necessary in legal proceedings/lawsuits
- Evaluate existing and proposed design standard(s) for CCFZ as needed
- Coordinate and staff the Colma Creek mitigation site trash cleanup/volunteer/outreach events as needed
- Coordinate or participate in field meetings with various individuals to provide access to Channel for surveys, monitoring, sampling, etc.
- Perform work to support the Culvert Repair and Replacement Project from Highway 101 to Utah Ave such that construction can commence and be completed

### **San Bruno Creek Flood Zone (SBCFZ)**

#### Activities:

- Perform plan reviews and provide comments for proposed projects
- Perform channel and tide gates inspections
- Facilitate maintenance, monitoring, and repairs for the SBCFZ pump stations (Angus and Walnut Pump Stations) (collectively, Pump Stations)
- Ensure continued utility service to Pump Stations (PG&E, propane) and cellular service for alarm
- Facilitate and coordinate vegetation management on Cupid Row Channel and proximate to Pump Stations facilities
- Assist with work required pursuant to the Memorandum of Understanding (MOU) with San Francisco International Airport (SFIA) for West of Bayshore Property and San Francisco Garter Snake (SFGS) Recovery Action Plan
- Coordination with Caltrans as required for access or channel work
- Provide information as needed for the coordination and communication regarding property owner issues/complaints
- Facilitate work for Pump Stations replacement projects as needed
- Facilitate or perform Pump Stations monitoring for MRP compliance
- Coordination with City of San Bruno (San Bruno) and others on projects within the SBCFZ
- Assist with applying for grant funding, if needed
- Facilitate hot spot cleanup, per MRP compliance
- Provide information as necessary regarding homeless encampments and cleanup coordination



## San Francisquito Creek Flood Zone (SFCFZ)

### Activities:

- Participate in annual maintenance walk organized by SFCJPA Staff (Annual Maintenance Walk)
- Perform maintenance as identified in Annual Maintenance Walk
- Review of SFCJPA sponsored documents (Environmental documents, PS&E)
- Respond to data requests related to the SFCFZ

## Ravenswood Slough Flood Zone (RSFZ) - An Inactive Zone

### Activities:

- Work as needed or assigned

## National Pollutant Discharge Elimination System (NPDES) Countywide and Pacifica Fees - Levied on the Property Tax Bill

### Activities:

- Work associated with confirming accuracy of NPDES fees from Controller's Office prior to being levied on the tax roll (annually)
- Coordination with C/CAG and their contractor for property owner status (e.g. tax exempt status particularly when properties change hands)
- Respond to inquiries (phone calls, emails, etc.) from property owners on amount and purpose of NPDES fees

The District acknowledges that it is responsible for all work performed at the direction of or under the terms of this Exhibit including all costs, claims and future obligations.

If the District requests engineering services not outlined in this Exhibit, the County will consider all requests based on staff availability and expertise. Additional services must be agreed upon in writing by both parties.

**Rate:** Engineering services will be billed based on the standard hourly rate in place at the time of service. District understands that rates are adjusted a minimum of annually and agrees to pay the current standard hourly rate at the time of service which may differ from the below.

At time of execution of this Agreement, standard hourly rates for engineering services are as follows\*:

B229 Director of Public Works	\$270.64
D038 Deputy Director of Public Works	\$209.48
D151 Financial Services Mgr. II	\$157.71
D060 Financial Services Mgr. I	\$137.98
D181 Management Analyst	\$114.29
E009 Senior Accountant-E	\$109.50
E007 Senior Accountant	\$109.50
E011 Accountant II	\$ 74.51
E351 FOS Supervisor	\$ 74.66
E350 Fiscal Office Specialist	\$ 70.33
E029 Administrative Assistant	\$ 85.67

D058 Principal Civil Engineer	\$239.61
D064 Senior Civil Engineer	\$215.73
J084 Natural Resources Specialist I	\$122.87
J085 Resource Conservation Specialist II	\$143.04
J087 Senior Resource Conservation Specialist	\$173.49
N018 Associate Engineer	\$165.63
N020 Associate Civil Engineer	\$181.02

\*Additional classifications may apply and shall be billed at the current standard hourly rate at the time of service.

## **Exhibit B – Payment Terms**

In consideration of the services provided by Contractor described in attached Exhibit A herein, and subject to the terms of this Agreement, the San Mateo County Flood and Sea Level Rise Resiliency District (District) shall pay Contractor based on the following fee schedule and terms:

Monthly invoices will be submitted to the District for the services provided as described in attached Exhibit A on a time and materials basis, and/or for the reimbursement of fees, or pass-through costs for services provided or paid for on behalf of the District as described in Exhibit A.

Invoices shall be submitted to the District by the County Department of Public Works on a monthly basis and include an itemized statement that describes the work performed during the period and summarizing progress on major work tasks, date (or dates) of service, complete scope of work, specific work completed, location of work, and breakdown of hours and costs. Payment shall be made by District within forty-five (45) days of receipt of the invoice. In instances where a dispute arises regarding a billing, the District agrees to pay the full amount of the invoice. The District and the Department of Public Works agree to enter into mediation if the billing dispute cannot be resolved within 45 days from the date of service. Total payment to Contractor shall not exceed a total not-to-exceed amount of \$4,870,000.

Authorization of Emergency Work - Included in this Agreement total not-to-exceed amount is \$500,000 as a minimum budget that is set aside for possible emergency repairs and response work. Contractor and District agree to work together to expedite the approval for and the payment of emergency work performed under Exhibit A. Both parties will work collaboratively to determine a minimum budget amount for possible emergency repairs as recommended by the Department of Public Works. The District shall adopt procedures that allow the District CEO to authorize timely emergency repairs.

Additional services outside of those described in attached Exhibit A must be authorized by the District's and County Department of Public Works' authorized representative(s) in writing prior to commencing work.

Invoices shall be remitted to:

San Mateo County Flood and Sea Level Rise Resiliency District  
1700 S. El Camino Real, Suite 502  
San Mateo, CA 94402  
Email: [LDong@OneShoreline.org](mailto:LDong@OneShoreline.org)

Contractor acknowledges that any sub-contractor listed on a bid proposal and/or assigned to perform public works project work under the terms of this Agreement shall be registered as a Public Works Contractor on the [www.dir.ca.gov](http://www.dir.ca.gov) website pursuant to Labor Code Section 1725.5 and that all such projects are subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.