

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE COUNTY OF SAN MATEO DEPARTMENT OF PUBLIC WORKS AND THE SAN MATEO**  
**RESOURCE CONSERVATION DISTRICT**  
**REGARDING**  
**WATERSHED PROTECTION AND ENHANCEMENT SERVICES**

This **Memorandum of Understanding** (MOU) is made and entered into this day of \_\_\_\_\_, 2021, by and between the **County of San Mateo Department of Public Works** (County or Department) and the **San Mateo Resource Conservation District** (RCD), hereinafter collectively referred to as the “**Parties**”.

The purpose of this MOU is to define the roles and responsibilities of the Parties regarding various watershed protection and enhancement activities and projects to comply with environmental regulatory requirements, Total Maximum Daily Load (TMDL) planning and implementation, and endangered species recovery actions specific to the Department’s infrastructure and operational activities.

The Parties will coordinate, as appropriate, on specific TMDL-related projects, mitigation, and species recovery actions and leverage existing and future education, outreach, and funding efforts. The RCD will provide a range of as-needed watershed protection and enhancement services to the Department including, but not limited to, technical services, application assistance for grant funding, private landowner coordination and technical assistance, public engagement, environmental permitting, biological monitoring, civil engineering design, project administration and management, assistance with mitigation and watershed enhancement project construction or capital improvements, and other various professional services. Authorization will be granted by the Department in Task Orders based on project-specific details and an agreed upon scope of work.

**RECITALS**

**WHEREAS**, San Mateo County’s Coastside watersheds are home to an abundance of natural resources, diverse ecosystems, and special status species such as Steelhead, Coho salmon, and California red-legged frog; and

**WHEREAS**, several creeks and waterbodies are listed as impaired by pollutants and as such, the San Francisco Bay Water Quality Control Board must develop specific TMDL regulations to address water quality conditions; and

**WHEREAS**, environmental regulatory agencies require alternatives analysis and selection of the least environmentally damaging practicable alternatives for maintenance, repair, and construction of public facilities; and

**WHEREAS**, least environmentally damaging practicable alternatives often involve holistic fixes that address creek reach- or watershed-level issues and consider resource sensitivity, conservation, and water quality protection; and

**WHEREAS**, endangered species recovery action plans specifically look to municipalities to incorporate habitat enhancement, such as fish passage and large woody debris features, into planned infrastructure repair projects; and

**WHEREAS**, the RCD is a special district focused on connecting communities and technical and education assistance to conserve and manage natural resources; and

**WHEREAS**, the RCD has successfully partnered with the County of San Mateo Parks Department on sediment reduction projects in the Pescadero Creek County Park Complex; inter-departmental watershed and natural resource protection efforts led by the County of San Mateo Office of Sustainability; and multiple facets of restoring the Pescadero-Butano Creek watershed and reducing impacts from flooding; and

**WHEREAS**, the RCD is specifically identified as a partner for recovery in both the National Marine Fisheries Service Central California Coast Coho Salmon Recovery Plan and the California Coastal Multispecies Recovery Plan as well as the Pescadero and Butano Creek Watershed Sediment TMDL; and

**WHEREAS**, compliance with enhanced natural resource and watershed protection requirements require enhanced planning, implementation, and coordination with multiple stakeholders that extend beyond the Department's current in-house capacity or expertise; and

**WHEREAS**, the Department desires to partner with the RCD to comply with watershed protection requirements, TMDL planning and implementation, and endangered species recovery actions specific to the Department's infrastructure and operational activities; and

**WHEREAS**, it is appropriate for the Parties to enter into a MOU defining the responsibilities, terms, and conditions.

**WHEREAS**, Government Code section 54981 allows the legislative body of any local government agency to contract with another agency for performance of municipal services or functions; and

**WHEREAS**, Government Code section 6502 provides that, if authorized by their legislative or other governing bodies, two or more public agencies may by MOU jointly exercise any power common to the parties.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

The terms and conditions of this MOU, all exhibits and attachments, and all documents expressly incorporated by reference, represent the entire MOU of the Parties with respect to the subject matter of this MOU. The terms and conditions of this MOU shall not be altered or modified except by a written amendment to this MOU signed by the Parties.

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments

Attachment I—§ 504 Compliance

Attachment IP – Intellectual Property

**2. Services to be performed by the RCD**

In consideration of the payments set forth herein and in Exhibit B, the RCD shall perform services for the Department in accordance with the terms, conditions, and specifications included in Exhibits A and attached hereto and incorporated by reference as though fully set forth herein.

**3. Payments**

In consideration of the services provided by the RCD in accordance with all terms, conditions, and specifications set forth herein and in Exhibit A, the County shall make payment to the RCD based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this MOU exceed One Million Dollars (\$1,000,000). In the event that County makes any advance payments, the RCD agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination, expiration, or completion of authorized Task Order work. The RCD is not entitled to payment for work not performed as required by this MOU.

**4. Term**

Subject to compliance with all terms and conditions, the term of this MOU shall be from March 9, 2021, through March 8, 2026.

The Department shall have the right to extend the initial Term of this MOU (the "Extension Options") for a maximum of two (2) additional years for one time. Such Extension Option shall be on all of the terms and conditions contained in this MOU. The Department may exercise the Extension Option by giving written notice to the RCD within thirty (30) days of the MOU expiration; provided, however, if the RCD is in material default hereunder on the date of giving such notice and fails to cure such default as provided herein, the Department may reject such exercise by delivering written notice thereof to the RCD promptly after such failure to cure.

**5. Termination**

This MOU may be terminated by the RCD or by the Director of Public Works or the Director's designee at any time without a requirement of good cause upon sixty (60) days' advance written notice to the other party. Subject to availability of funding, the RCD shall be entitled to receive payment for work/services provided prior to termination of the MOU. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the MOU.

County may terminate this MOU or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to the RCD as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this MOU for cause. In order to terminate for cause, County must first give the RCD notice of the alleged breach. The RCD shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If the RCD fails to cure the breach within this period, County may immediately terminate this MOU without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this MOU pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

**6. Contract Materials**

At the end of this MOU, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by the RCD under this MOU shall become the property of the County and shall be promptly delivered to County. Upon termination, the RCD may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

The RCD agrees and understands that the work/services performed under this MOU are performed as an independent contractor and not as an employee of County and that neither the RCD nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

**a. Mutual Hold Harmless**

- (A) It is agreed that County shall defend, save harmless and indemnify RCD, its officers and employees from any and all claims which arise out of the terms and conditions of this MOU and which result from the negligent acts or omissions of County, its officers and/or employees.
- (B) It is agreed that RCD shall defend, save harmless, and indemnify County, its officers and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this MOU and which result from the negligent acts or omissions of RCD, its officers and/or employees.
- (C) In the event of concurrent negligence of RCD, its officers and/or employees, and County, its officers 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 MOU, shall be apportioned according to the California theory of comparative negligence.

**b. Intellectual Property Indemnification**

The RCD hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this MOU, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this MOU and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this MOU.

The RCD warrants that the services it provides under this MOU do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. The RCD shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this MOU infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. The RCD's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies the RCD promptly in writing of any notice of any such third-party claim; (b) County cooperates with the RCD, at the RCD's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) the RCD retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided the RCD shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this MOU become, or in the RCD's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this MOU to be seriously endangered or disrupted, RCD shall, at the RCD's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, the RCD will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this MOU which have been modified by or for County (other than modification performed by, or at the direction of, the RCD) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this MOU which have been used by County in a manner prohibited by this MOU.

The duty of the RCD to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

## **9. Assignability and Subcontracting**

The RCD shall not assign this MOU or any portion of it to a third party or subcontract with a third party to provide services required by the RCD under this MOU without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this MOU without penalty or advance notice.

## **10. Insurance**

**a. General Requirements**

The RCD shall not commence work or be required to commence work under this MOU unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and the RCD shall use diligence to obtain such insurance and to obtain such approval. The RCD shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the RCD's coverage to include the contractual liability assumed by the RCD pursuant to this MOU. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers' Compensation and Employer's Liability Insurance**

The RCD shall have in effect during the entire term of this MOU workers' compensation and employer's liability insurance providing full statutory coverage. In signing this MOU, the RCD certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this MOU.

**c. Liability Insurance**

The RCD shall take out and maintain during the term of this MOU such bodily injury liability and property damage liability insurance as shall protect the RCD and all of its employees/officers/agents while performing work covered by this MOU 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 the RCD's operations under this MOU, whether such operations be by RCD, any subcontractors, 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:

- (a) Comprehensive General Liability..... \$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) Professional Liability..... \$1,000,000

County 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 (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County 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.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this MOU to the contrary, immediately

declare a material breach of this MOU and suspend all further work and payment pursuant to this MOU.

#### **11. Compliance With Laws**

All services to be performed by the RCD pursuant to this MOU shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to 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 MOU and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this MOU.

Further, the RCD certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, the RCD shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

RCD will timely and accurately complete, sign, and submit all necessary documentation of compliance.

#### **12. Non-Discrimination and Other Requirements**

##### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this MOU (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

##### **b. Equal Employment Opportunity**

The RCD shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this MOU. RCD's equal employment policies shall be made available to County upon request.

##### **c. Section 504 of the Rehabilitation Act of 1973**

The RCD shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to

discrimination in the performance of any services this MOU. This Section applies only to the contractors who are providing services to members of the public under this MOU.

**d. Compliance with County's Equal Benefits Ordinance**

The RCD shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the RCD's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this MOU as if fully set forth here, and RCD and any subcontractors shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

The RCD certifies that no finding of discrimination has been issued in the past 365 days against the RCD by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against the RCD within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, the RCD shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this MOU. Failure to comply with this Section shall constitute a material breach of this MOU and subjects the MOU to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

The RCD shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the MOU or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified RCD that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination). Violation of the non-discrimination provisions of this MOU shall be considered a breach of this MOU and subject the RCD to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this MOU;
- ii. disqualification of the RCD from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or



- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to the RCD under this MOU or any other MOU between the RCD and County.

**h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, the RCD certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

**13. Compliance with County Employee Jury Service Ordinance**

The RCD shall comply with Chapter 2.85 of the County's Ordinance Code, which states that the RCD shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the RCD, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with the RCD or that the RCD may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this MOU, the RCD certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if the RCD has no employees in San Mateo County, it is sufficient for the RCD to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, the RCD certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its MOU with San Mateo County, the RCD shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this MOU's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but RCD acknowledges that Chapter 2.85's requirements will apply if this MOU is amended such that its total value meets or exceeds that threshold amount.

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

- (a) The RCD shall maintain all required records relating to services provided under this MOU for three (3) years after County makes final payment and all other pending matters are closed, and the RCD shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.
- (b) The RCD shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.
- (c) The RCD agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, 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 MOU, and to evaluate the quality, appropriateness, and timeliness of services performed.

**15. Merger Clause; Amendments**

This MOU, including the Exhibits and Attachments attached to this MOU and incorporated by reference, constitutes the sole MOU of the parties to this MOU 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 MOU conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this MOU, the provisions of the body of the MOU shall prevail. Any prior MOU, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

The validity of this MOU and of its terms, the rights and duties of the parties under this MOU, the interpretation of this MOU, the performance of this MOU, and any other dispute of any nature arising out of this MOU 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 MOU shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

Any notice, request, demand, or other communication required or permitted under this MOU shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) 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 the COUNTY, to:

Mark Chow, P.E.  
County of San Mateo Department of Public Works  
555 County Center, 5th Floor  
Redwood City, CA 94063-1665  
Phone (650) 363-4100  
Fax (650) 361-8220  
e-mail: [mchow@smcgov.org](mailto:mchow@smcgov.org)

In the case of RCD, to:

Kellyx Nelson, Executive Director  
San Mateo Resource Conservation District  
80 Stone Pine Road, Suite 100  
Half Moon Bay, CA 94019  
Phone (650) 712-7765  
Fax (650) 726-0494  
e-mail: [kellyx@sanmateorcd.org](mailto:kellyx@sanmateorcd.org)

**18. Electronic Signature**

Both County and RCD wish to permit this MOU and future documents relating to this MOU to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this MOU may revoke such MOU to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this MOU.

**19. Payment of Permits/Licenses**

RCD bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this MOU at RCD's own expense prior to commencement of said work/services unless otherwise stipulated in executed Task Orders. Failure to do so will result in forfeit of any right to compensation under this MOU.

**20. Contract Remedies:**

Upon breach or default of any of the provisions, obligations, or duties embodied in this MOU by the RCD, County shall retain the right to exercise any administrative, contractual, equitable, or legal remedies available without limitation. A waiver by County of any occurrence of breach or default is not a waiver of subsequent occurrences and shall be limited to that particular occurrence.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS  
MEMORANDUM OF UNDERSTANDING:

COUNTY OF SAN MATEO

San Mateo Resource Conservation  
District

By: \_\_\_\_\_  
David J. Canepa,  
President, Board of Supervisors

Date: \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
1149CBB39DC5442...  
Executive Director

Date: 3/3/2021 | 3:12 PM PST  
\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of said Board

## **Exhibit A – Services**

### **1. Description of Services to be Performed by the RCD:**

The RCD shall provide on-call watershed protection and enhancement services including, but not limited to, technical services, application assistance for grant funding, private landowner coordination and technical assistance, public engagement, environmental permitting, biological monitoring, civil engineering design, project administration and management, assistance with mitigation and watershed enhancement project construction or capital improvements, and other various professional services as authorized by the Department. All work shall be authorized by the Department with a Task Order. Task Orders shall clearly define the roles and responsibilities of the County, Department and RCD. As necessary and appropriate the Task Orders shall include relevant requirements for the County or Department that must be complied with by the RCD as well as RCD requirements of the County or Department.

Labor provided by County personnel to complete any projects or tasks authorized per this MOU is to be provided without expectation of payment or reimbursement by the RCD. A task order authorization must be issued by the Department prior to initiation of work by the RCD. The Department on a case-by-case basis, and based on grant funding requirements, may provide matching funds either in cash and/or in-kind for grants secured by the RCD for projects authorized under this MOU. Labor provided by Department personnel for grant matches are provided without expectation of payment or reimbursement by the funder.

### **2. Obligations and Responsibilities.**

Parties shall support and strategically work together on natural resource and watershed protection issues supporting the purpose of this MOU.

For tasks authorized under this MOU, the RCD will take the lead on all aspects of project and fiscal management, including, but not limited to, project planning and permitting, fund-raising efforts, budgets, developing and managing contracts and subcontracts, leading coordination between the various organizations and agencies contributing to this effort, construction oversight, and post-construction monitoring and reporting, unless otherwise agreed to as documented in the project-specific task order authorization(s).

The RCD will be responsible for coordinating among project partners to ensure that all necessary permits and private landowner access agreements are obtained. For mitigation and watershed enhancement projects involving construction or capital improvements, the RCD will oversee the work of the engineering, construction, and biological monitoring contractor(s) and subconsultant(s). The RCD will be responsible for all aspects of project management, including reporting and successful and timely completion of deliverables. The RCD will develop and distribute bid package, select contractor(s), and manage contracts. Construction contracts will need to meet County

requirements to be specified in the task order authorization. The RCD will oversee coordination among project partners and contractor(s) and ensure pre-, during, and post-project monitoring and reporting are completed.

For projects involving construction on County-owned property or within the County right-of-way or easements, 30%, 60%, 90% and 100% design plans or as otherwise stipulated in an executed Task Order, shall be developed per County Standard Plans and Specifications and agency fish passage criteria, where applicable, and made available to Department staff for review prior to approval. Prior to the initiation of construction, RCD staff, County staff, and the contractor(s) shall participate in a pre-construction meeting to review project details, submittals, and permitting requirements. RCD staff, County staff, and the contractor(s) shall also walk the project site and document the existing conditions. Following the completion of construction, the contractor(s), RCD staff, and County staff will again walk and document the post-construction conditions ensuring that construction was per plan.

The RCD will be responsible for ensuring that approved projects comply with all applicable planning and building codes and environmental regulations. Per County of San Mateo Board of Supervisors Resolution No. 070851 and the San Francisco Bay Regional Water Quality Control Board Municipal Regional Permit, non-native and invasive species management activities must be conducted in accordance with the County of San Mateo Integrated Pest Management Policy. Work shall also be conducted in accordance with the County of San Mateo Routine Maintenance Program Manual.

The Department will authorize the RCD to conduct any required post-project photo monitoring, annual inspections, or required mitigation reporting on County-owned property or within the County right-of-way or easement. Authorization will be granted and detailed on a project-specific basis as detailed in the task order authorization and agreed upon proposal. After the completion of approved projects, the Department will assume primary financial responsibility, subject to availability of funds from the County, for infrastructure maintenance on County-owned property or within the County right-of-way or easements. The RCD may assume primary financial responsibilities for projects as agreed upon with Department. The RCD shall assume responsibility for ensuring that post-project photo monitoring, annual inspections, required mitigation, and post-construction maintenance activities and reporting are implemented per permit requirements on private land and shall execute all necessary landowner agreements. Additional details pertaining to funding and maintenance responsibilities will be included in the specific project description and task order authorizations.

In the event that the RCD has interest in submitting grant applications for funding related to the watershed protection and enhancement efforts involving the Department:

- Contact shall be made with the Department as soon as possible to review project ideas;
- RCD shall submit a draft project description and budget to the Department for review prior (at least 4 weeks—minimum) to grant proposal submission deadline;

- Department shall provide necessary project materials to support grant applications secured by the RCD in a timely manner; and
- RCD shall provide the Department a minimum of two weeks notice to provide a letter of support or any grant application support materials.

The RCD shall ensure compliance with all grant contract terms and conditions including any labor compliance program requirements.

3. Task Order Negotiation, Authorization, and Amount and Method of Payment:

- A. Negotiation: RCD shall be entitled to payments in consideration for work performed per above, and based on those professional fees set forth in Exhibit B. Separate and individual "not-to-exceed" (NTE) cost proposals may be requested from RCD during the term of the MOU. The Department shall review the proposal as to scope, cost and delivery schedule.
- B. Task Order Authorization: Each task order shall include specific work requirements, time frames for completion and NTE cost amount, which shall be mutually agreed upon by RCD and Department in writing prior to commencement of each task order. Once a proposal is found to be acceptable, a task order authorization shall be issued, as needed and at the Department's sole discretion for each individual project or scope of work as defined in the task order. RCD shall commence work upon receipt of task order authorization. RCD agrees to complete the approved project or task order work for an amount equal to or less than the approved project or task order NTE amount and within the time limits set forth in the approved project or task order timetable.
- C. Amount and Method of Payment: The RCD may have several task orders assigned by the Department as part of this MOU. Payment shall not be made for any work unless approved and authorized in advance by the Department. Total compensation paid to the RCD for all task orders assigned shall not exceed the County's total fiscal obligation under this MOU of One Million Dollars (\$1,000,000) and may be less than said amount. Since this is an on-call agreement, the number of task orders issued is indeterminate, the resulting total compensation paid to the RCD may be significantly less than the maximum amount of the MOU. The RCD's fee schedule rates shall not be adjusted unless approved through a contract amendment by the RCD and the Department. Invoice(s) may be submitted by RCD according to progress achieved and recognized by the Department, for payment by the County thirty (30) working days from date of receipt, provided that the invoices are complete and absent errors and/or corrections as may be found upon review of invoice(s).

4. Reimbursable Expenses:

Reasonable and necessary expenses related to the services performed and actually incurred shall be reimbursed at cost, or as stipulated in Exhibit "B", Payments, upon submission of an expense report with backup documentation and Department approval. Reimbursable expenses shall be included in the "not-to-exceed" cost proposals. Reimbursable expenses are defined as job-related expenses directly incurred by the RCD in the performance of services provided under the MOU. These include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar, and travel expenses within a 50-mile radius from RCD's office to the job site. Reimbursement for all other travel in connection with the project or task order shall be at the same rate granted to employees of the County and must be approved in advance and in writing by the Department.

5. Changes in Work:

Upon execution by both County and RCD, any substantive changes to the timeline, "not-to-exceed" amount, or scope of work of a task order must be approved in writing and will result in an amendment to the task order. All other terms and conditions of the MOU shall remain in full force and effect.



### **Exhibit B – Payments**

In consideration of the services provided by RCD described in Exhibit A and subject to the terms of the MOU, County shall pay RCD based on the following fee schedule and terms:

1. County shall pay RCD upon receipt in Accounting Section of the Department of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this MOU shall be based upon the RCD's fee schedule in Section 2 below which may be adjusted for each fiscal year for inflation. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.

2. RCD Hourly Fee Schedule:

Executive Director	\$215.09
Administrative Officer	\$112.08
Biologist	\$77.19
Conservation Project Assistant	\$59.13
Conservation Project Coordinator	\$79.99
Conservation Project Manager	\$89.06
Conservation Program Manager	\$115.76
Conservation Program Specialist	\$102.50
Natural Resource Specialist	\$120.98
Network Manager	\$125.97

3. County shall pay RCD reimbursable expenses including consultant or contractor charges directly related to the projects at cost. The RCD shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the RCD is required to travel outside of San Mateo County in the performance of his duties under this MOU. Such travel must first be approved in writing by the County. The RCD shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
4. The County's total fiscal obligation under this MOU shall not exceed \$1,000,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this MOU. Specific projects that may be assigned to the RCD shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not to-exceed amounts for multiple projects that may be assigned to the RCD

shall not exceed the total \$1,000,000 not-to-exceed amount for this MOU without prior written approval by the County Board of Supervisors.

Invoices are to be submitted to: Accounting Unit  
Department of Public Works  
555 County Center -5th Floor  
Redwood City, CA 94063

And via e-mail: DPW\_Accounting@smcgov.org>

## ATTACHMENT I

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☐ a. Employs fewer than 15 persons.
- ☐ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

\_\_\_\_\_  
Name of 504 Person - Type or Print

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

## **Attachment IP Intellectual Property Rights**

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1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.