

**AGREEMENT
BETWEEN CONTRA COSTA COUNTY FLOOD CONTROL
& WATER CONSERVATION DISTRICT AND AMERICAN RIVERS, INC.,
FOR THE THREE CREEKS PARKWAY RESTORATION PROJECT**

This Agreement Between Contra Costa County Flood Control & Water Conservation District and American Rivers, Inc., For The Three Creeks Parkway Restoration Project (“Agreement”) is entered into on _____, 2018 (the “Effective Date”), by the Contra Costa County Flood Control & Water Conservation District, a body corporate and politic created under laws of the State of California (“District”), and American Rivers, Inc., a non-profit corporation organized and existing under laws of the District of Columbia (“American Rivers”). The parties hereto may be referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

- A. American Rivers is a non-profit corporation headquartered in the District of Columbia whose purpose is the restoration of rivers and critical wildlife habitat.
- B. District, created by the Contra Costa County Flood Control and Water Conservation District Act (West’s Wat. Code Appen., § 63-1 et seq.) (“the Act”), is the owner of portions of Marsh Creek, a watercourse that runs 30 miles from the eastern slope of Mt. Diablo to the San Joaquin Delta, including the portions of Marsh Creek referenced herein.
- C. District has legal authority to enter into this Agreement under Section 5(b) of the Act. (West’s Water Code Appen., § 63-5.)
- D. On or about August 16, 2016, District, American Rivers and the Department of Water Resources of the State of California (“DWR”) entered into Grant Agreement No. 4600011176 (“Grant Agreement”), in which DWR agreed to provide a grant in an amount not to exceed \$744,404 to fund a portion of an estimated \$2,738,954 in costs associated with the “Three Creeks Restoration Project” (hereafter “Grant Project”). American Rivers is the sponsor of the Grant Project, and District is the co-sponsor. American Rivers and District are collectively referred to in the Grant Agreement as the “Grantee.”
- E. The Grant Project generally involves the planning, design, environmental review, excavation, and planting of a segment of the Marsh Creek channel in the Brentwood area, along with associated project and construction management activities, community involvement, monitoring and maintenance. The channel segment in question begins at the Union Pacific Railroad crossing over Marsh Creek and ends at the Marsh Creek confluence with Sand Creek, and will be referred to as the “Lower Reach.” As set forth

in the Grant Agreement, construction would involve the removal of approximately 12,000 cubic yards of earth along 1,400 linear feet of the east bank of the creek, creating approximately one acre of new floodplain surfaces up to 40 feet in width. The new floodplains and east bank of the channel segment would then be planted with native riparian vegetation. Thereafter, the new vegetation would be monitored and maintained under a plan to be developed and agreed upon by the Parties.

- F. The Grant Project is one of two projects in which the District is involved concerning Marsh Creek. The other is a project to increase stormwater conveyance capacity by widening the Marsh Creek channel upstream of the creek segment described in Recital E. In 2000, District completed the first phase of what, at that time, was a two-phase project to widen the channel from its confluence with Deer Creek to Summer Circle. The first phase segment began at Dainty Avenue and ended at Summer Circle. The second phase segment is to begin at the Deer Creek confluence and end at Dainty Avenue. This segment will be referred to as the “Upper Reach.”
- G. District and American Rivers now propose to link the channel widening project with the Grant Project. This would involve, first, adding a third creek segment to the widening project, beginning at the terminus of the Grant Project segment – the Sand Creek confluence – and ending at the Deer Creek confluence. This segment will be referred to as the “Middle Reach.” The originally planned 15 feet of widening would then be expanded to approximately 30 feet to accommodate the planting of native riparian vegetation.
- H. Under the revised proposal, in the Middle Reach, approximately 2,500 cubic yards of earth would be excavated along 800 linear feet of creek bank, creating floodplains up to 15 feet in width. Similar to the Grant Project, native riparian plantings would be planted and established. Other work and improvements are also proposed for the Middle Reach, including (1) the relocation of the Marsh Creek trail; (2) acquisition of fee title to an approximately one-half acre portion of a 10.2 acre parcel on the west side of Marsh Creek, between Sand Creek and Deer Creek, formerly known as the “Griffith Parcel” and now commonly known as the “Hancock Parcel” (APN 017-110-011), which is needed for the widening of this creek segment; acquisition of land rights to use other undeveloped portions of the Hancock Parcel as a staging area and for placement of excavated material; and (3) construction of a clear-span pedestrian bridge. The work and improvements described in this Recital will be collectively referred to as the “Middle Reach Work.” Similar to the Grant Project, the plantings in the Middle Reach would be monitored and maintained under a plan to be agreed upon by the Parties.
- I. In the Upper Reach, the revised proposal calls for approximately 10,500 cubic yards of earth to be excavated along 1600 linear feet of creek bank, creating floodplains up to 15 feet in width, and native riparian plantings would be planted, established, monitored and maintained in accordance with an agreed-upon plan. Other work and improvements in the Upper Reach include (1) construction of a retaining wall on the west bank at Central

Avenue and (2) relocation of the Marsh Creek trail. The work and improvements described in this Recital will be collectively referred to as the “Upper Reach Work.” Similar to the Grant Project, the plantings in the Upper Reach would be monitored and maintained under a plan to be agreed upon by the Parties.

- J. The planning, design, environmental review and construction of the Middle Reach Work and the Upper Reach Work, and the associated monitoring and maintenance, will be referred to as the “Marsh Creek Widening Project.”
- K. District and American Rivers also propose to revise the improvements planned for the Lower Reach from what is described in the Grant Agreement. Under this proposal, approximately 4,655 cubic yards of earth would be excavated along 1600 linear feet of the east bank of the channel and approximately 8,065 cubic yards would be excavated to incorporate an existing water quality basin into the Project. Additional improvements would include a new unpaved foot-trail within the new floodplain, and improvements to the City of Brentwood’s Sungold Park, including a trail, landscaping and a creek overlook area. The modifications described in this Recital will be referred to as the “Lower Reach Work Modifications.”
- L. The Grant Project, Marsh Creek Widening Project and Lower Reach Work Modifications are collectively known as the “Three Creeks Parkway Restoration Project” and will be referred to in this Agreement as the “Project.”
- M. The purpose of this Agreement is to set forth the respective obligations of the Parties that would become effective upon the District’s approval of the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the Parties agree as follows.

AGREEMENT

- 1. Term. This Agreement becomes effective on the Effective Date and continues in full force and effect until terminated in accordance with Section 19.
- 2. Condition Precedent. Party obligations set forth in this Agreement take effect only upon District’s approval of the Project.
- 3. American Rivers Grant Project Obligations.
 - a. American Rivers will be solely responsible to DWR for ensuring compliance with, and shall comply with, all obligations of American Rivers and District, either individually or collectively as the Grantee, that are set forth in the Grant Agreement, including without limitation all tasks described in the Work Plan attached to the Grant Agreement as Exhibit A, except as otherwise set forth in this Agreement.

b. American Rivers will promptly provide District with copies of all reports submitted by American Rivers to DWR under the Grant Agreement.

4. Environmental Review. District will serve as lead agency and satisfy all applicable environmental review requirements applicable to the Project under the California Environmental Quality Act (CEQA).

5. Design.

a. Plans and specifications.

(1) Preparation. American Rivers will prepare two sets of final (100%) plans, specifications and cost estimates for the Project. One set of plans, specifications and cost estimates will pertain to the civil/earth work generally described in Exhibit A, attached hereto and incorporated herein by reference, and will be referred to as the “Civil Set.” The second set of plans, specifications and cost estimates will pertain to the landscaping work generally described in Exhibit B, attached hereto and incorporated herein by reference, and will be referred to as the “Landscaping Set.” Plans and specifications must conform to industry standards and be in accordance with this Agreement, the current Contra Costa County Public Works Department Standard Plans, the Caltrans Standard Plans (2015), and the State of California Standard Specifications (2015).

(2) Warranty. American Rivers warrants that the plans will be adequate to accomplish the Project, and if they prove to be inadequate in any respect, American Rivers shall make whatever changes are necessary to accomplish the Project, subject to District review and approval.

(3) District Review and Approval. American Rivers will obtain District’s approval of the Civil Set and Landscape Set before solicitation of any bids or selection of any contractors to perform any Project Work. The plans and specifications contained in the approved Civil Set will be referred to as the “Civil Plans.” The approved plans and specifications contained in the approved Landscaping Set will be referred to as the “Landscaping Plans.” The improvements set forth in the Civil Plans will be referred to as the “Civil/Earth Work.” The improvements set forth in the Landscaping Plans will be referred to as the “Landscaping Work.” The Civil/Earth Work and Landscaping Work may be referred to collectively as the “Project Work.”

b. Changes.

(1) After Civil Plans have been approved by District, field orders or change orders that affect the original design upon which the Civil Plans are based, the intent of the original design, or American Rivers’ share of costs, require American Rivers’ advance approval in writing. Civil/earth work that is not set forth in the approved Civil Plans, but is agreed to in advance in writing by the Parties, will be referred to as “Additional Civil/Earth Work.”

(2) After Landscaping Plans have been approved by District, field orders or change orders that affect the original design upon which the Landscaping Plans are based, the intent of the original design, or costs, require District's advance approval in writing. Landscaping work that is not set forth in the approved Landscaping Plans, but is agreed to in advance in writing by the Parties, will be referred to as "Additional Landscaping Work."

(3) American Rivers will not change the Project's design professionals without first obtaining District's written consent.

6. Acquisitions.

a. District will utilize its best efforts to obtain fee title to an approximately half-acre portion of the Hancock Parcel that is approximately 30 feet in width and shares the length of the eastern boundary of the parcel, from Sand Creek to Deer Creek (the "Hancock Property"). Notwithstanding anything in this Agreement to the contrary, in the event the District fails to obtain the Hancock Property, District will have no obligation to construct any portion of the Middle Reach Work.

b. District will utilize its best efforts to acquire rights to use a different, undeveloped portion of the Hancock Parcel for the purpose of contractor staging and disposal of excavated material.

c. District will utilize its best efforts to acquire all rights of entry necessary to complete the Project.

d. Costs of acquisition of the above land and land rights will be paid as specified in Section 13 of this Agreement.

7. Contracting.

a. Selection.

(1) Civil/Earth Work. District will select and retain one or more contractors to perform the Civil/Earth Work, and provide any other labor or materials required to complete the Civil/Earth Work, in accordance with the Grant Agreement and all applicable legal requirements.

(2) Landscaping Work. American Rivers will select and retain one or more contractors to perform the Landscaping Work, and provide any other labor or materials required to complete the Landscaping Work, in accordance with the Grant Agreement and all applicable legal requirements. American Rivers will obtain District's approval of the contractor prior to execution of a contract between American Rivers and the contractor.

(3) Changes. American Rivers will not allow the substitution of Project contractors or subcontractors except with District's prior written consent.

b. Contracts.

(1) District contracts. To assist American Rivers in obtaining disbursements of funding under the Grant Agreement, in all of District's contracts for construction of Civil/Earth Work, District will require the contractor(s) to submit line item invoices that identify, by reference to the applicable reach and nearest station of Marsh Creek, the location of each unit of work.

(2) American Rivers contracts. In all of its contracts for construction of any Landscaping Work, American Rivers will include the following provision:

“Pursuant to Labor Code section 1773, the Director of the Department of Industrial Relations has ascertained the general prevailing rates of wages per diem, and for holiday and overtime work, in the locality in which the Project work is to be performed for each craft, classification, or type of worker needed to execute the Project work. Contractor shall pay, and require all subcontractors to pay, at least these prevailing wage rates to all persons on the Project work.”

8. Improvement Security. Prior to the commencement of any Project Work, American Rivers will provide as security to District:

a. Performance and Guarantee: Security in an amount equal to the sum of (1) 100% of the estimated cost of construction of the Landscaping Work and (2) \$3,062,083, which is 100% of the estimated Civil/Earth Work costs to be reimbursed to District under Section 14.a. Such security shall consist of a corporate surety bond, in a form acceptable to District, issued by a surety admitted in California and naming District as co-obligee on the bond. With this security, American Rivers guarantees performance under this Agreement and acceptance against any defective materials or any unsatisfactory performance.

b. Payment: Security in an amount equal to 100% of the estimated cost of the Landscaping Work. Such security shall consist of a corporate surety bond, in a form acceptable to District, issued by a surety admitted in California and naming District as co-obligee on the bond. With this security, American Rivers guarantees payment to the contractor(s), to subcontractors, and to persons renting equipment or furnishing labor or materials to them or to American Rivers.

9. Insurance.

a. In all of its contracts for any Project Work, American Rivers will include provisions that require the contractor(s) to do all the following:

(1) Obtain, and maintain until completion of the Landscaping Work, Commercial General Liability Insurance, including blanket contractual (or contractual liability) coverage, broad form property damage coverage, and coverage for owned and non-owned

automobiles, with a minimum combined single-limit coverage of \$1 million for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof, arising out each accident or occurrence;

(2) Obtain, and maintain until completion of the Landscaping Work, Workers' Compensation Insurance pursuant to state law; and

(3) Provide endorsements, certificate(s) of insurance, or other evidence of insurance satisfactory to District, listing the coverages required under this Subsection, and naming District, Contra Costa County ("County"), City of Brentwood, East Bay Regional Park District and their governing bodies, officers, agents, and employees as additional insureds, and requiring 30 days' written notice to District and County of policy lapse or cancellation.

b. In addition, American Rivers will:

(1) Obtain prior to the commencement of any Landscaping Work, and maintain until District's acceptance of all Landscaping Work, Commercial General Liability Insurance, including blanket contractual (or contractual liability) coverage, broad form property damage coverage, and coverage for owned and non-owned automobiles, with a minimum combined single-limit coverage of \$1 million for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof, arising out of each accident or occurrence;

(2) Obtain prior to the commencement of any Landscaping Work, and maintain until District's acceptance of all Landscaping Work, Workers' Compensation Insurance pursuant to state law; and

(3) Provide to District endorsements, certificate(s) of insurance, or other evidence of insurance satisfactory to District listing the coverages required under this Subsection, and naming District, County, City of Brentwood, East Bay Regional Park District and their governing bodies, officers, agents, and employees as additional insureds, and requiring 30 days' written notice to District and County of policy lapse or cancellation.

c. Before allowing its contractor(s) to begin any Landscaping Work, American Rivers will submit to District the evidence of insurance required under Subsections 9.a. and 9.b. and will obtain District's approval to begin work.

10. Indemnification.

a. Indemnification by Contractors. In all of its contracts for any Landscaping Work, American Rivers will include the following indemnification provisions:

(1) Contractor promises to and shall defend, indemnify, save, and hold harmless the indemnitees from the liabilities as defined in this section.

(2) The indemnitees benefitted and protected by this promise are District, County, City of Brentwood and East Bay Regional Park District and their respective elective and appointive boards, commissions, officers, agents and employees.

(3) The liabilities protected against are any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses, or liabilities arising out of or in connection with the actions defined below for personal injury, sickness, disease, emotional injury, death, property damage (including loss of use), trespass, nuisance, inverse condemnation, patent infringement, or any combination of these, regardless of whether or not such liability, claim, or damage was foreseeable at any time before District approved the improvement plans or accepted the improvements as completed, and including the defense of any suit(s) or action(s) at law or equity concerning these.

(4) The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this contract and attributable to Contractor, subcontractor(s), supplier(s), trucker(s), anyone for whose acts Contractor may be liable, or any officer(s), agent(s), or employee(s) of one or more of them.

(5) The promise and agreement in this section is not conditioned or dependent on whether or not any indemnitee has prepared, supplied, or approved any plan(s), drawing(s), specification(s), or special provision(s) in connection with this work or has insurance or other indemnification covering any of these matters.

(6) Except as prohibited by Civil Code section 2782, Contractor's obligations under this section shall exist regardless of the existence or degree of fault of District or any other indemnitee.

(7) Contractor's obligations under this section shall extend to claims arising after the work is completed and accepted if the claims are related to alleged acts or omission that occurred during the course of the work. District's inspection is not a waiver of full compliance with these requirements.

(8) Contractor and Contractor's insurance carrier(s) shall respond within 15 days to the tender of any claim for defense and indemnity by District or County, unless this time has been extended by the indemnitee.

(9) With respect to third-party claims against Contractor, Contractor waives all rights of any kind to express or implied indemnity against the indemnitees.

(10) Nothing in this section is intended to establish a standard of care owed to any third party or to extend to any third party the status of third-party beneficiary.

b. Indemnification by American Rivers.

(1) To the extent not covered by the defense and indemnification provided by its contractor(s), American Rivers will defend, indemnify, save, and hold harmless District and

County and their officers, agents, and employees the same as required of the contractor(s) as described in Subsection 10.a., except that American Rivers' obligations shall also include any act or omission (negligent or non-negligent) attributable to American Rivers or its officers, agents or employees.

(2) American Rivers will defend, indemnify, save, and hold harmless District and its officers, agents, and employees from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses, or liabilities arising from American Rivers' acts or omissions under this Agreement or the Grant Agreement.

c. Indemnification by District.

District will defend, indemnify, save, and hold harmless American Rivers and its officers, agents, and employees from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses, or liabilities arising from District's acts or omissions under this Agreement or the Grant Agreement.

11. Permits.

a. American Rivers will apply for one or more encroachment permits from District to authorize the performance of the Landscaping Work, and all monitoring and maintenance thereof to be performed by American Rivers.

b. District will apply for all required permits, certifications and approvals for the Project from federal and state agencies, and local agencies other than District. American Rivers will prepare and provide to District all applications and other documents necessary for District to apply for and obtain the above described permits, certifications and approvals.

c. Permit costs will be paid in accordance with Section 13 of this Agreement.

12. Improvements.

a. Civil/Earth Work. After the issuance of all permits, certifications and approvals required for the Civil/Earth Work, District, by and through itself and its contractor(s), will complete the Civil/Earth Work in accordance with the Civil Plans, and will complete the Civil/Earth Work and any Additional Civil/Earth Work in a good and workmanlike manner, in accordance with accepted construction practices, the County Public Works Department Standard Plans and the Caltrans Standard Specifications (2015). Where there is a conflict between any of the foregoing, the stricter requirements shall govern.

b. Landscaping Work. After the issuance of all permits, certifications and approvals required for the Landscaping Work, American Rivers, by and through itself and its contractor(s), will complete the Landscaping Work in accordance with the Landscaping Plans, and will complete the Landscaping Work and any Additional Landscaping Work in a good and workmanlike manner, in accordance with accepted construction practices, the County Standard

Plans and the Caltrans Standard Specifications (2015). Where there is a conflict between any of the foregoing, the stricter requirements shall govern.

c. Guarantee and Warranty. American Rivers guarantees that all Landscaping Work will be free from defects in materials or workmanship and shall perform satisfactorily for a period of three years from after the Board of Supervisors accepts the Landscaping Work as complete. American Rivers agrees to promptly correct, repair, or replace, at its sole expense, any and all defects in the Landscaping Work, including without limitation any and all dead or dying vegetation.

d. No Waiver. Inspection of the Landscaping Work or materials, or approval of the Landscaping Work or materials, or statement by any officer, agent, or employee of District or County indicating that the Landscaping Work or any part of it complies with the requirements of this Agreement, or acceptance of the whole or any part of the Landscaping Work or materials, or any combination or all of these acts, shall not relieve American Rivers of its obligation to fulfill this Agreement as prescribed. Nor shall District be estopped by any such acts from bringing any action for damages arising from the failure to comply with any of the terms and conditions of this Agreement.

13. Costs.

a. American Rivers' Responsibility. Except for costs for which District is responsible as set forth in Section 13.b., American Rivers will be responsible for, and pay when due, all costs of the Project ("Project Costs"). Project Costs include, without limitation, any and all costs incurred by American Rivers and District, either prior to or after the Effective Date, in the planning, coordination, design, environmental review and mitigation, permitting, construction, monitoring and maintenance activities and acquisitions associated with the Project.

b. District's Responsibility.

(1) Environmental Review Costs. District is responsible for a total of 50 percent of the environmental review costs related to the Project. Of this amount, \$25,000 will be allocated to the Grant Project, in accordance with the Grant Agreement. American Rivers is responsible for the remaining share of the environmental review costs.

(2) Acquisition Costs. District will be responsible for 50 percent of the cost of acquisition of the Hancock Property. All other costs of acquisition of the Hancock Property, and all other costs of acquisition of the land rights referenced in Sections 6.b. and 6.c., will be the responsibility of American Rivers.

(3) Permitting Costs. District will be responsible for 50 percent of the cost of all permits obtained by District for the Project. American Rivers will be responsible for the remaining share.

(4) Civil/Earth Work Costs.

(a) District will pay, when due, all costs owed to persons who contract with the District to perform Civil/Earth Work or Additional Civil/Earth Work on the Project.

(b) District is responsible for a share of the cost of completion of the Civil/Earth Work within the Middle Reach and Upper Reach of the Project (“District Civil/Earth Work Cost Share”). American Rivers will be responsible for the remaining share. American Rivers will also be responsible for the entire cost of completion of Civil/Earth Work within the Lower Reach. District’s share will be calculated as follows:

(i) During construction of the Civil/Earth Work in the Middle Reach and Upper Reach, the District Civil/Earth Work Cost Share will be calculated based on assigned percentages for each item of work performed, as set forth in Exhibit C, attached hereto and incorporated by reference. Assigned percentages have been determined based on estimated work quantities and an agreed-upon analysis of the Party’s proportional shares of the Middle Reach Work and Upper Reach Work.

(ii) After the Parties have agreed that the Civil/Earth Work in the Middle Reach and Upper Reach is complete, District will recalculate the percentages shown in Exhibit C, using actual quantities instead of estimated quantities, and then use those percentages to calculate District’s adjusted share of the actual Civil Earth/Work costs incurred in the Middle Reach and Upper Reach (“Adjusted District Civil/Earth Work Cost Share”). If the Adjusted District Civil/Earth Work Cost Share is more than the sum of Civil/Earth Work costs related to the Middle Reach and Upper Reach that have been previously reimbursed to District, American Rivers will promptly pay the difference to District. If the Adjusted District Civil/Earth Work Cost Share is less than the sum of Civil/Earth Work costs related to the Middle Reach and Upper Reach that have been previously reimbursed to District, District will promptly pay the difference to American Rivers.

(c) District will be responsible for the share of the cost of completion of Additional Civil/Earth Work that the Parties agree in advance in writing that the District should pay. American Rivers will be responsible for the remaining share. The procedure set forth in Section 13.b.(4)(b)(ii) does not apply to Additional Civil/Earth Work costs.

(5) Project Management Costs. District will be responsible for 100 percent of its project management costs related to Civil/Earth Work in the Middle Reach and Upper Reach.

(6) Construction Management Costs. District will be responsible 34.7 percent of its construction management costs related to Civil/Earth Work in the Middle Reach and Upper Reach. American Rivers will be responsible for the remainder of District’s construction management costs.

(7) Design Engineering Costs. District will be responsible for 29.4 percent of the cost of design engineering incurred by American Rivers that pertain to the Middle Reach and Upper Reach. American Rivers will be responsible for the remainder of its design engineering costs.

14. Reimbursements.

a. Reimbursements to District. All Project Costs incurred by District, other than Project Costs for which District is responsible under Section 13.b., are reimbursable to District (“Reimbursable Costs”). District will provide American Rivers with quarterly invoices that set forth District’s Reimbursable Costs. District’s invoices will be a format acceptable to American Rivers, and include such detail that American Rivers requests to substantiate its requests to DWR and other entities for grant disbursements. Prior to any work on the Project, American Rivers will provide District with a written explanation of the required invoice details and format. Within 60 days of receipt of an itemized invoice from District that identifies Reimbursable Costs, American Rivers will remit payment in full to District. American Rivers’ obligation to reimburse District exists without regard to the status of requests by American Rivers to DWR or any other entities for grant disbursements or other monies to pay for these costs. In the event that American Rivers disputes a District invoice, the Parties agree to work together cooperatively to resolve the dispute and, if necessary, utilize alternative dispute resolution processes before seeking judicial intervention.

b. Reimbursements to American Rivers.

(1) American Rivers will provide District with an invoice for District’s share of American Rivers’ design engineering costs described in 13.b.(6). District will pay the invoice by deducting the balance due from one or more invoices to be provided by District to American Rivers under Section 14.a.

(2) If the environmental review costs incurred by American Rivers exceed its 50 percent share as described in Section 13.b.(1), American Rivers will provide District with an invoice for the difference, together with an accounting of all Project environmental review costs incurred by the Parties. District will pay the invoice by deducting the balance due from one or more invoices to be provided by District to American Rivers under Section 14.a.

15. Completion Deadline. Time is of the essence. American Rivers shall complete the Landscaping Work in accordance with the approved schedule under the Grant Agreement and in no event later than March 1, 2022. If American Rivers fails to complete the Landscaping Work by that date, and the Parties have not agreed in writing to an extension, District may proceed to complete the Landscaping Work, and in that event, American Rivers shall pay all costs of completing the Landscaping Work.

16. Monitoring and Maintenance.

a. Written Plan.

(1) Prior to the commencement of any Project Work, and in consultation with District, American Rivers will prepare and obtain District's approval of an Operations and Maintenance Manual and Monitoring Plan ("Plan") for the Project. The Plan will include all monitoring and maintenance tasks set forth in the Grant Agreement and, at a minimum, describe all of the following to the satisfaction of the Parties:

(a) Monitoring Component

- (i) Documentation of Project Area
- (ii) Development of vegetation monitoring plan
- (iii) Monitoring of topographic changes on floodplain channel
- (iv) Ten-year vegetation and geomorphic monitoring plan
- (v) Training of volunteers
- (vi) Routine monitoring requirements
- (vii) Party responsibilities

(b) Maintenance Component

- (i) Minimum maintenance during three-year establishment
- (ii) Retention of contractor to maintain and replace vegetation during three-year establishment and warranty period
- (iii) Terms of \$150,000 long-term maintenance endowment
- (iv) Party responsibilities

b. Monitoring. The Parties will comply with their respective monitoring obligations under the approved Plan and as specifically set forth below:

c. Maintenance. The Parties will comply with their respective maintenance obligations under the approved Plan, including but not limited to the following:

(1) Commencing with approval of the Project by the District Board, American Rivers will provide three years of Project planting maintenance, including the limitation of invasive weeds and replacement of unsuccessful plantings with the same or similar species. District will assume all maintenance obligations following the three-year period.

(2) Prior to approval of the Project, American Rivers will establish and fund a \$150,000 endowment for the purpose of funding long-term maintenance of Project plantings, to be controlled by District and utilized in accordance with the terms set forth in the Plan.

17. Documents; Accounting. Within 30 days of a written request by District, American Rivers will provide a written accounting of Project costs incurred in the preceding 30 days or other period of time specified by District, in a format acceptable to District.

18. Modification. This Agreement may be modified or amended only in a writing executed by the Parties.

19. Termination. This Agreement may be terminated by mutual, written consent of the Parties. Subsection 10.b. and 10.c. of this Agreement shall survive the termination of this Agreement.

20. Notices. All notices under this Agreement (including requests, demands, reports, approvals or other communications) will be in writing. A notice will be deemed to have been duly given and received when delivered by hand to the respective Party to whom the notice is directed, or when deposited by registered or certified mail, postage prepaid, in a sealed envelope addressed to the Party at its address as set forth below:

American Rivers: American Rivers, Inc.
120 Union Street
Nevada City, CA 95959
Attn: John Cain, Director of Conservation, CA Flood Management

District: Contra Costa County Flood Control and Water Conservation District
255 Glacier Drive
Martinez, CA 94553
Attn: Tim Jensen, Assistant Chief Engineer

A party may designate, by written notice to the other, a different address for notice.

21. Waiver. No waiver of any provision of this Agreement will be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement will be deemed, or constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

22. Assignment. This Agreement may not be assigned, assumed, pledged, or hypothecated without the advance, written consent of the other Party. Any attempt to circumvent this requirement shall be void and unenforceable.

23. No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the Parties any rights or remedies thereunder and no person or entity other than the Parties shall have standing to enforce this Agreement.

24. Entire Agreement. This Agreement, together with the Grant Agreement, contains the entire understanding of the Parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties. Any alleged promise or representation by either Party shall be unenforceable unless it is set forth in this Agreement or in another written agreement or permit signed by the Parties.

25. Counterparts. This Agreement may be executed in counterparts and so executed shall constitute an Agreement which shall be binding upon all Parties hereto. A photocopy of the fully executed Agreement shall have the same force and effect as the original.

26. Signatures. By affixing his/her signature below, each of the persons signing this Agreement warrants and represents that he/she has read and understands this Agreement, that in signing on behalf of a Party he/she has full and complete authority from that Party to bind said Party to perform and comply with each and every term, obligation, condition and covenant set forth in this Agreement, and that the Party on behalf of whom he/she signs agrees to be bound by its terms.

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

AMERICAN RIVERS, INC.

By: _____
Brian M. Balbas
Chief Engineer

By: _____
W. Robert Irvin
President

Approved as to Form:

Sharon L. Anderson
County Counsel

By: _____
Kristin M. May
Chief Financial Officer

By: _____
Deputy

Approved as to Form:

Attachments:
Exhibits A-C

By: _____
Name _____
Title: _____

Attorneys for American Rivers

Exhibit A

Project Civil/Earth Work

The Project's Civil/Earth Work will include approximately 26,000 cubic yards of excavation along approximately 4,000 linear feet of Marsh Creek, creating up to 1.0 acre of frequently inundated floodplain, 1.87 acres of woody riparian vegetation and 1.87 acres of grasslands and native scrub in the Lower Reach, Middle Reach and Upper Reach segments of the creek collectively. Improvements will be consistent with the Project descriptions set forth in the approved Mitigated Negative Declaration/Initial Study for the Project and Addendum 1 thereto. Specific work in each segment will include all of the following:

Lower Reach Work

- Excavation of approximately 13,000 cubic yards of earth along approximately 1,600 linear feet of the eastern bank, with no more than 4.25 acres of total area disturbed
- Creation of floodplains/benches 10 to 40 feet wide, with slopes of typically 3:1 or less, but never more than 2:1 maximum
- Creation of creekside mulch path in vicinity of a .7-acre linear water quality/detention basin located between Carmel Estates/Sungold Park and Marsh Creek ("Basin")
- Removing fences around the Basin and reinstallation of fence along western length of Basin
- Construction of new trail/access road in City of Brentwood Sungold Park
- Lowering eastern berm of Basin
- Construction of creek overlook with seating and interpretive area
- Reconfiguration of trail and access road at Sungold Park.
- Installation of permanent slope protection in the form of erosion control matting, armor, biotechnical methods or appropriate ground cover

Middle Reach Work

- Excavation of approximately 2,500 cubic yards of earth along 88 linear feet along both banks, with no more than 1.0 acre of total area disturbed
- Creation of floodplain benches of varying widths with slopes ranging from 2:1 to 3:1
- Construction of clear-span pedestrian bridge just upstream of Marsh Creek confluence with Sand Creek, near northeastern corner of Griffith parcel, approximately 10 feet wide and 1000 feet long

- Relocation of Marsh Creek trail to new top of eastern bank
- Construction of temporary creek crossings to facilitate construction access between east side of Marsh Creek and Griffith Parcel, consisting of culverts up to 60 feet in length

Upper Reach Work

- Approximately 10,500 cubic yards of excavation along 1,600 linear feet, with no more than 2.1 acres of total area disturbed
- Creation of flood plains/benches with widths ranging from 3 to 15 feet and slopes of 2:1 or 3:1
- Relocation of Marsh Creek trail to new top of eastern bank
- Installation of 250-foot retention wall along west bank at Central Boulevard
- Installation of permanent slope protection such as erosion control matting or other biotechnical methods on all benches and slopes

Exhibit B

Project Landscaping Work

Landscaping improvements by American Rivers are proposed in the Lower Reach, Middle Reach and Upper Reach of the Project. Improvements will be consistent with the Project descriptions set forth in the approved Mitigated Negative Declaration/Initial Study for the Project and Addendum 1 thereto, and include all of the following:

- The planting of native wetland forbs, grasses, shrubs and trees within approximately 3.5 acres along approximately 4,000 linear feet of Marsh Creek, as follows:
 - The planting of riparian trees along the banks, including valley oak, sycamore, live oak, blue oak, box elder, buckeye, cottonwood and willow.
 - The planting of slopes and banks with grassland and scrub species, including creeping wild rye, California brome, purple needlegrass, dense-flowered lupine, mugwort, common fiddleneck, elegant clarkia and California poppy.
 - The planting of floodplain areas with seasonal wetland species, including creek clover, Baltic rush and deer sedge.
- The installation of interpretive signs

H:\Flood Control District\ExhibitB.3.6.18.docx

Exhibit C

The following table sets forth descriptions of labor and materials required to complete the Civil/Earth Work in the Middle Reach and Upper Reach of the Three Creeks Restoration Project. Costs of the Civil/Earth Work will be shared between District and American Rivers. Cost shares have been determined for each of the following items. For the purpose of calculating reimbursable shares to be invoiced during construction, District's share of costs for each item will be determined by multiplying the actual cost of the item by the applicable percentage shown below for that item. The remaining share would be reimbursable by American Rivers. These cost shares apply only to bid items in quantities that do not exceed the quantities set forth in the Civil Set.

Example: District will be responsible for 67 percent of the cost of the channel excavation within the Middle Reach and Upper Reach (Item 10). The remaining share would be reimbursable by American Rivers.

Item No.	Item Description	District's Share (%)
1	Mobilization	35%
2	Traffic Control System	35%
3	Job Site Management	35%
4	Prepare Water Pollution Control Program	35%
5	Temporary Silt Fence	100%
6	Temporary Construction Roadway (Stream Crossing)	100%
7	Remove Concrete	0%
8	Clearing And Grubbing	33%
9	Surplus Soil Placement	25%
10	Channel Excavation	67%
11	Rock Excavation	100%
12	Structure Excavation (Riprap Trench)	100%
13	Structure Excavation (Rock Slope Protection)	100%
14	Site Boulders	0%
15	Rootwad	0%
16	6" Plastic Pipe (Schedule 40)	0%
17	Fiber Rolls	100%
18	Class 2 Aggregate Base	15%
19	Hot Mix Asphalt (Type A)	0%
20	Remove Asphalt Concrete Pavement	0%
21	Remove Base And Surfacing	24%
22	Retaining Wall (Soldier Pile Wall)	100%
23	Steel Soldier Pile (W 8 X 24)	100%
24	Steel Soldier Pile (W 10 X 33)	100%
25	Steel Soldier Pile (W 12 X 53)	100%
26	24" Drilled Hole	0%
27	24" Cast-In-Drilled-Hole Concrete Piling	0%
28	Structural Concrete, Bridge Footing	0%
29	Minor Concrete (Minor Structure, Type J Inlet)	100%

30	Furnish Prefabrication Steel Bridge	0%
31	Erect Prefabricated Steel Bridge	0%
32	Remove Pedestrian Barricade (Bollard)	100%
33	Remove Retaining Wall (Wood)	100%
34	12" Plastic Pipe (Storm Drain, HDPE)	0%
35	18" Plastic Pipe (Storm Drain, HDPE)	0%
37	Class 2 Permeable Material	0%
39	Remove Pipe (Storm Drain)	100%
40	Remove Headwall	0%
41	Remove Manhole (Storm Drain)	0%
42	Adjust Manhole To Grade (Storm Drain)	0%
45	Rock Slope Protection (1/2 T, Class VII, Method A)	100%
46	Rock Slope Protection (60 LB, Class II, Method B)	100%
47	Concreted Rock Slope Protection (60 LB, Class II, Method B) (C	0%
48	Minor Concrete (Bridge Deck)	0%
50	Minor Concrete (Sidewalk)	0%
51	Temporary Fence (Type CL-6)	100%
52	Remove Chain Link Fence	0%
53	Pedestrian Railing	100%
54	Midwest Guardrail System (Wood Post)	100%

H:\Flood Control District\ExhibitC.3.6.18.docx