

**AGREEMENT FOR CREEK MONITORING SERVICES
WITH CONTRA COSTA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT**

THIS Agreement for Creek Monitoring Services (this "Agreement") is made and entered into as of the 11th day of February, 2020 (the "Effective Date") by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and Contra Costa County Flood Control and Water Conservation District, a flood control district created under the laws of the State of California ("District") (each a "Party" and collectively, the "Parties").

RECITALS

City requires the services of the District to provide creek monitoring services on Marsh Creek at Dainty Avenue in the City. District has creek monitoring equipment throughout Contra Costa County and has the experience and ability to provide monitoring services, as well as equipment maintenance services and has affirmed its willingness and ability to perform such work.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work. The City requests, and District agrees to render, those services set forth on Exhibit A (Parties' Responsibilities) attached hereto and incorporated herein by this reference (the "Services"), in accordance with the terms and conditions set forth in this Agreement.
2. Status of District. District will perform the Services as an independent contractor and in pursuit of District's independent calling, and not as an employee of the City. District will be under the control of City only as to the results to be accomplished.
3. Term. Unless earlier terminated as provided in Section 12 (Termination) below, this Agreement will be effective from the date first written above to June 30, 2049.
4. Responsibility of the District. In addition to performing its other obligations under this Agreement, District shall perform and complete those items set forth on Exhibit A attached hereto.
5. Responsibility of the City. In addition to performing its other obligations under this Agreement, City shall perform and complete those items set forth on Exhibit A attached hereto.
6. Photos of installed equipment. See Exhibits B and B-1 attached hereto.
7. Compensation. City will not compensate District for the Services except as this Agreement may be amended to provide therefore. Installation of the monitoring equipment will assist District in maintaining Marsh Creek.
8. Indemnification.
 - A. District will hold harmless, defend and indemnify City and its officers, agents and employees from and against any and all causes of action, claims, demands, costs or liability including reasonable attorneys' fees and costs of litigation arising out of or in any way connected with its performance of this Agreement, caused in whole or in part by any negligent act or omission or willful misconduct of the District or any of its

subcontractors, except to the extent such liability was caused by the negligence or willful misconduct of City.

B. City will hold harmless, defend or indemnify District and its officers, agents and employees from and against any and all claims, demands, costs or liability including reasonable attorneys' fees arising out of or in any way connected with its performance of this Agreement, caused in whole or in part by any negligent act or omission or willful misconduct of the City or any of its subcontractors, except to the extent such liability was caused by the negligence or willful misconduct of District.

9. Insurance. Each Party shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance:

A. Commercial General Liability Coverage. With limits of no less than Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.

B. Automobile Liability Coverage. Covering all vehicles used in the performance of this Agreement proving One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

C. Compliance with State Workers' Compensation Requirements. Each Party will insure itself against liability for Workers' Compensation pursuant to the provisions of California Labor Code § 3700, et seq. and shall, at all times, upon demand of the other Party's authorized representative or his/her designee, furnish proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with California Labor Code.

D. Other Insurance Provisions. The insurance of each Party will be in force during the life of this Agreement and will not be cancelled without thirty (30) days prior written notice to the other Party by certified mail. City or District (as applicable), its officers agents and employees will be named as additional insureds on commercial general and automobile liability insurance on the other Party's policy.

E. Self-Insurance. The Parties may each satisfy its insurance obligations stated above by providing satisfactory evidence that it is self-insured and has sufficient financial resources to meet the insurance obligations stated herein.

10. Compliance with Laws. The Parties will comply with all applicable local, state and federal laws and regulations including, but not limited to, those related to air pollution control and those prohibiting discrimination and harassment; and those related to the payment of prevailing wages.

11. Notices. All notices with respect to this Agreement will be given to the parties as follows:

For City:
City of Brentwood
150 City Park Way
Brentwood, CA 94513
Phone No. (925) 516-5420
Facsimile No. (925) 516-5421
Attn: Meghan Laporta
Email: mlaporta@brentwoodca.gov

For District:
Brian M. Balbas, Chief Engineer
Contra Costa County Flood Control and
Water Conservation District
255 Glacier Drive
Martinez, CA 94553
Phone No. (925) 313-2000
Facsimile No. (925) 313-2333
Attn: Mark Boucher
Email: mark.boucher@pw.cccounty.us

12. Assignment. Neither Party may assign this Agreement or any part of it, or any monies due or to become due under it, without the prior written consent of the other Party.
13. Termination. City or District may terminate this Agreement at any time after a discussion, and written notice to the other Party. If this Agreement is terminated, District will remove the creek monitoring equipment and own it. If this Agreement is terminated before ten years after the Effective Date, District will pay City an amount equal to the *pro rata* cost of the creek monitoring equipment with the numerator being ten years. If this Agreement is terminated more than ten years after the Effective Date, the District will not pay the City for the creek monitoring equipment.
14. Choice of Law. This Agreement shall be governed by the laws of the State of California.
15. Authority. The individuals executing this Agreement on behalf of the Parties each represent and warrant that they have the legal power, right and actual authority to bind their respective Party to the terms and conditions of this Agreement.

DISTRICT:

CITY:

By: _____
 Brian M. Balbas, Chief Engineer

By: _____
 Gustavo "Gus" Vina, City Manager

By: _____

ATTEST:

By: _____
 Margaret Wimberly, City Clerk

Printed Name:

APPROVED AS TO FORM:

Title:

By: _____
 Damien Brower, City Attorney

EXHIBIT A
PARTIES' RESPONSIBILITIES

DISTRICT RESPONSIBILITIES

The District shall:

1. Maintain the monitoring equipment attached to the concrete barrier rail, on the south side of the Marsh Creek Bridge (Marsh Creek 28C0400), at Dainty Avenue, Brentwood.
2. Maintain the location of the monitoring equipment for adequate access and functionality of the equipment.
3. Maintain equipment in good working order and perform any necessary repairs to the equipment.
4. With the City's consent, upgrade the equipment along with any future upgrades to the District's network.
5. Provide the City with electronic or hard copies of the District's stream flow data upon City's request.
6. Provide automated alert messages to the City for creek levels requested and agreed to by the City.

CITY RESPONSIBILITIES

The City shall:

1. Bear the initial cost of creek monitoring equipment purchased by the City.
2. Provide the purchased creek monitoring equipment to the District for District's use in Marsh Creek at Dainty Avenue, Brentwood.
3. Pay for the subsequent upgrade and/or replacement costs for the creek monitoring equipment.