



AGREEMENT NUMBER SFB0017-RA0013	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NO. 94-6000509	

STANDARD AGREEMENT

(RA 3/2018)

THIS AGREEMENT, made and entered into this _____ day of _____, 2020 in the State of California, by and between the San Francisco Bay Restoration Authority, a regional public entity, through its duly appointed

TITLE OF OFFICER ACTING FOR PUBLIC ENTITY Executive Officer	PUBLIC ENTITY San Francisco Bay Restoration Authority	, hereafter called the Authority, and
GRANTEE'S NAME Contra Costa County Flood Control and Water Conservation District		, a flood control district under

the laws of the State of California, hereafter called the grantee.

The grantee and the Authority hereby agree as follows:

SCOPE OF AGREEMENT

Pursuant to the San Francisco Bay Restoration Authority Act, California Government Code § 66700-66706, the Authority hereby grants to the grantee a sum not to exceed \$7,929,855 (seven million nine hundred twenty-nine thousand eight hundred fifty-five dollars), subject to this agreement. The grantee shall use these funds to complete the following project (the "project") at Lower Walnut Creek, 3 miles east of the City of Martinez, Contra Costa County, as shown on Exhibit A, which is incorporated by reference and attached.

(Continued on following pages)


The provisions on the following pages constitute a part of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

GRANTOR	GRANTEE
AGENCY San Francisco Bay Restoration Authority	GRANTEE (If other than an individual, state whether a corporation, partnership, etc.) Contra Costa County Flood Control and Water Conservation District
BY (Authorized Signature) 	BY (Authorized Signature)
PRINTED NAME AND TITLE OF PERSON SIGNING Samuel Schuchat, Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING Brian M. Balbas, Chief Engineer
ADDRESS & PHONE NUMBER 1515 Clay Street, 10 th Floor Oakland, CA 94612 Phone: (510) 286-1015	ADDRESS 255 Glacier Drive, Martinez, CA 94553 Phone: (925) 313-2394

AMOUNT ENCUMBERED BY THIS DOCUMENT \$7,929,855.00	PROGRAM/CATEGORY (CODE AND TITLE) Measure AA
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$-0-	WORK ITEM NUMBER 1772
TOTAL AMOUNT ENCUMBERED TO DATE \$7,929,855.00	PROJECT NAME Lower Walnut Creek Restoration Project

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

PRINTED NAME AND TITLE OF PERSON SIGNING	SIGNATURE	DATE
		

GRANTEE ACCOUNTING PROJECT MANAGER AGREEMENT FILE

The project consists of implementing the North and South reaches of the Lower Walnut Creek Restoration Project to achieve restoration and enhancement of approximately 168 acres of tidal wetlands, 23 acres of seasonal wetlands, and 82 acres of transitional and upland areas, and construction of approximately 2.6 miles of public trails.

The grantee shall carry out the project in accordance with this agreement and the work program, as provided in the “WORK PROGRAM” section, below. The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the project.

CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT

The grantee shall not begin construction of the project and the Authority shall not be obligated to disburse any funds unless and until the following conditions precedent have been met:

1. The Board of Supervisors of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.
2. The Executive Officer of the Authority (“the Executive Officer”) has approved in writing:
 - a. A work program for the project, as provided in the “WORK PROGRAM” section, below.
 - b. A plan for installation of signs and acknowledgment of Authority support, as provided in the “SIGNS AND ACKNOWLEDGMENT” section, below.
 - c. All contractors that the grantee intends to retain in connection with the project.
3. The grantee has provided written evidence to the Authority that:
 - a. All permits and approvals necessary to the completion of the project under applicable local, state and federal laws and regulations have been obtained.
 - b. The grantee has provided for required insurance coverage, including additional insured endorsement, as described in the “INSURANCE” section, below.
 - c. The grantee has entered into a project labor agreement with the local Building Trades Council(s) for the county(ies) in which the project is located that covers all project work that is within the craft jurisdictions of the Unions and that contains the terms required by Authority Resolution 22, which is attached as Exhibit C.
4. The grantee has entered into a written agreement with the State Lands Commission sufficient to enable the grantee to carry out the project in compliance with this agreement.
5. The grantee has provided the Authority with satisfactory documentation evidencing sufficient property rights in the project site to carry out the project in compliance with this agreement and to protect the public interest in the improvements and facilities constructed under this agreement.

ADDITIONAL GRANT CONDITIONS

The grantee shall also meet the following conditions:

1. The Publication of Project Information. The grantee shall upload project information, including periodic monitoring data, to the project tracker for “EcoAtlas”, an online database and web-based viewer of stream and wetland maps, restoration information, and monitoring results (currently available at <http://ptrack.ecoatlas.org/>), to track project information and aggregate data.
2. Using the Lessons Learned Report form provided by the Authority, and in accordance with the deadline set forth in the PROJECT COMPLETION section below, the grantee shall submit a report describing whether the project met the project goals and information learned from project implementation that could help others more effectively implement similar projects.

TERM OF AGREEMENT

This agreement is effective as of the date entered into, as shown on the first page, which date shall be inserted by the Authority upon signature of both parties. The parties may sign this agreement using an electronic process specified by the Authority.

This agreement shall run from its effective date through December 31, 2043 (the “termination date”) unless otherwise terminated or amended as provided in this agreement. However, all work shall be completed by December 31, 2023 (the “completion date”). The grantee shall submit a final Request for Disbursement no later than September 30, 2023.

AUTHORIZATION

The signature of the Executive Officer of the Authority on this agreement certifies that at its December 6, 2019 meeting, the Authority adopted the resolution included in the staff recommendation attached as Exhibit B. This agreement is executed under that authorization.

Standard Provisions

WORK PROGRAM

Before beginning construction, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with the purposes of this grant agreement. The work program shall include:

1. Construction plans and specifications that have been certified by a licensed architect or registered engineer, or approved by the grantee's Public Works Director.
2. A schedule of completion for the project specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget shall describe all labor and materials costs of completing each component of the project, including the grantee's labor and materials costs and costs to be incurred under a contract with any third party retained by the grantee for work under this agreement. For each project component, the project budget shall list all intended funding sources, including the Authority's grant, and all other sources of monies, materials, or labor. The grantee shall review the plans on-site with Authority staff.

If all or any part of the project to be funded under this agreement will be performed by third parties ("contractors") under contract with the grantee, then the grantee shall, prior to initiating any contractor selection process, submit the selection package, including any applicable construction plans and specifications that have been certified or approved as described above, to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the contractor selection process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to construction.

The work program shall have the same effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the grantee's submission of a modified work program and the Executive Officer's written approval of it. If this agreement and the work program are inconsistent, the agreement shall control.

The grantee shall construct the project in accordance with the approved work program.

SIGNS AND ACKNOWLEDGMENT

Prior to beginning the project, the grantee shall submit a plan to the Executive Officer for the installation of signs and acknowledgment of Authority support. Except as the Executive Officer agrees otherwise, the plan shall commit the grantee to mention the Authority's support in its project-related press releases, contacts with the media, and social media postings, and on its website.

The grantee shall install and maintain a sign or signs visible from the nearest public roadway identifying the project, acknowledging Authority assistance and displaying the Authority's logo, and directing the public to the project. The Authority shall provide to the grantee specifications for the signs. The grantee may incorporate the required information into other signs as approved by the Executive Officer. In special circumstances, where the placement of signs or the general specifications are inappropriate, the Executive Officer may approve alternative, more appropriate methods for acknowledging the sources of funding. The grantee shall submit plans describing the number, design, placement and wording of the signs, or the specifications of a proposed, alternative method. The Authority will withhold final disbursement until the signs are installed in accordance with the approved plan.

BONDING

If the grantee intends to use any contractors on any portion of the project to be funded under this agreement, construction shall not begin until each contractor has furnished a performance bond in favor of the grantee in the following amounts: for faithful performance, one hundred percent (100%) of the contract value; and for labor and materials, one hundred percent (100%) of the contract value. This requirement shall not apply to any contract for less than \$20,000.

Any bond furnished under this section shall be executed by an admitted corporate surety insurer licensed in the State of California.

COSTS AND DISBURSEMENTS

When the Authority determines that all the conditions precedent set forth in the CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT section above have been fully met, the Authority shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

The withholding for this agreement is ten percent. The Authority shall disburse funds for costs incurred to date, less ten percent, upon the grantee's satisfactory progress under the approved work program, and upon the grantee's submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The

Authority's fiscal year ends on June 30. For all costs the grantee incurs through the end of the Authority's fiscal year, Requests for Disbursement shall be submitted by July 20th. Upon the completion of any project task identified in the approved work program to the satisfaction of the Authority, the Authority may disburse the funds withheld for that task, provided that the grantee has complied with the "PROJECT OR TASK COMPLETION" section below, with respect to the project task. The Authority shall disburse amounts earlier withheld and not subsequently disbursed upon the grantee's satisfactory completion of the project and compliance with the "PROJECT OR TASK COMPLETION" section below, with respect to the project as a whole, upon the Authority's acceptance of the project.

The Authority will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Authority will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations ("CCR"), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Authority will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

The grantee shall request disbursements by filing with the Authority a fully executed "Request for Disbursement" form (available from the Authority). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred for all work done for which disbursement is requested. Hourly rates billed to the Authority, and specified in the approved work program budget shall be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee shall sign the forms. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.

3.A supporting progress report summarizing the current status of the project and comparing it to the status required by the work program (budget, timeline, tasks, etc.) including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The grantee's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Authority of its obligation to disburse funds to the grantee until the grantee corrects all deficiencies.

EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

The total amount of this grant may not be increased except by written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer, provided that the grantee first submits a revised budget to the Authority and requests disbursement based on the revised budget. Any deviation greater than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget approved in advance and in writing by the Executive Officer. The Authority may withhold payment for items that exceed the amount allocated in the project budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

PROJECT OR TASK COMPLETION

At any time after completion of a project task identified in the approved work plan, the grantee may supply the Authority with evidence of completion of the project task by submitting a final report with respect to the project task. The final project task report shall include:

1. Documentation of completion of the project task.
2. A fully executed final "Request for Disbursement" form for the project task.

Within thirty days of grantee's compliance with this paragraph, the Authority shall determine whether the project task has been satisfactorily completed. If the Authority determines that the project or project task has been satisfactorily completed, the Authority shall issue to the grantee a letter of acceptance of the project task.

Within thirty days of completion of construction of the project, the grantee shall supply the Authority with evidence of completion by submitting a final report which includes:

1. An inspection report by a licensed architect or registered engineer or the grantee's Chief Engineer certifying completion of the project according to the approved work program.
2. Documentation that signs are installed as required by the "SIGNS AND ACKNOWLEDGMENT" section of this agreement.
3. A fully executed final "Request for Disbursement."
4. "As built" drawings of the completed project and photographs documenting project completion.
5. The Lessons Learned Report.

Within thirty days of grantee's submission of the above, the Authority shall determine whether the grantee has satisfactorily completed the project. If so, the Authority shall issue to the grantee a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM

Before the project has commenced, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

Before the project is complete, the Authority may terminate or suspend this agreement for any reason by providing the grantee with seven days notice in writing. In either case, the grantee shall immediately stop work under the agreement and take all reasonable measures to prevent further costs to the Authority. The Authority is responsible for any reasonable and noncancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from the Authority authorizes work to resume.

Before the project is complete, the grantee may terminate this agreement for any reason by providing the Authority with seven days notice in writing and repaying to the Authority all amounts disbursed by the Authority under this agreement. The Authority may, at its sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

The parties hereby expressly waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement, the grantee shall be liable for immediate repayment to the Authority of all amounts disbursed by the Authority under this agreement. The Authority may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies the Authority may have for breach of this agreement.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

OPERATION AND MAINTENANCE

The grantee shall use, manage, maintain and operate the completed project throughout the term of this agreement consistent with the purposes for which the Authority's grant was made as set forth in Exhibit B to this agreement. The grantee assumes all operation and maintenance costs of the completed project; the Authority shall not be liable for any cost of maintenance, management, or operation. The grantee may be excused from its obligations for operation and maintenance during the term of this agreement only upon the written approval of the Executive Officer.

For purposes of this agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

MITIGATION

Without the written permission of the Executive Officer, the grantee shall not use or allow the use for mitigation (in other words, to compensate for adverse changes to the environment elsewhere) of the portion of real property on which the Authority has funded construction. In providing permission, the Executive Officer may require that all funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Authority. As used in this section, the term "mitigation" includes, but is not limited to, any use

of the property in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation.

INSPECTION

Throughout the term of this agreement, the Authority shall have the right to inspect the project area to ascertain compliance with this agreement.

INDEMNIFICATION AND HOLD HARMLESS

The grantee shall indemnify and hold harmless the Authority, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs, including, without limitation, litigation costs and attorneys fees (“Claims”), resulting from or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors, and employees any way connected with or arising out of this agreement, except for Claims arising out of the active negligence or willful misconduct of the Authority, its officers, agents, or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as provided in Civil Code section 2778. This agreement supersedes any right the grantee may have as a public entity to indemnity and contribution as provided in Gov. Code Sections 895 et seq.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the Authority, its officers, agents, or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this agreement.

The obligations in this “INDEMNIFICATION AND HOLD HARMLESS” section shall survive termination of this agreement.

INSURANCE

The grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons and damage to property that may arise from or in connection with any activities of the grantee or its agents, representatives, employees, or contractors associated with the project undertaken pursuant to this agreement.

As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage requirement in whole or in part through: (a) its contractors’ procurement and

maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee's participation in a risk management plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section.

The grantee shall maintain property insurance, if required below, throughout the term of this agreement. Any required errors and omissions liability insurance shall be maintained from the effective date through two calendar years after the completion date. The grantee shall maintain all other required insurance from the effective date through the completion date.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- a. Insurance Services Office ("ISO") Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable.
- b. Automobile Liability coverage: ISO Form Number CA 0001, Code 1 (any auto).
- c. Workers' Compensation insurance as required by the Labor Code of the State of California.
- d. Property insurance covering the loss, damage, or destruction of the facilities or structures constructed under this agreement against fire and extended coverage perils. (Any proceeds of loss payable under this coverage shall be used to replace, rebuild and/or repair the damaged portions of the facilities and structures constructed under this agreement.)

2. Minimum Limits of Insurance. The grantee shall maintain coverage limits no less than:

- a. General Liability: *(Including operations, products and completed operations, as applicable)* \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this agreement, or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Course of Construction: Completed value of the project with no coinsurance penalty provisions.

- d. Property Insurance: 90 percent of full replacement cost of the facilities or structures.
3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.
4. Required Provisions Concerning the Authority.
- a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to the Authority; or in the event of cancellation of coverage due to nonpayment, after ten days prior written notice to the Authority. The grantee shall notify the Authority within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses or is cancelled, the grantee shall provide the Authority with evidence of renewal or replacement of the policy.
- b. The grantee hereby grants to the Authority, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the Authority, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.
- c. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- (i) The Authority, its officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with the work or operations.
- (ii) For any claims related to this agreement, the grantee's insurance coverage shall be primary insurance as respects the Authority, its officers, agents and employees, and not excess to any insurance or self-insurance of the Authority.

(iii) The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.

5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Authority and approved in writing by the Executive Officer. _
6. Verification of Coverage. The grantee shall furnish the Authority with original certificates and amendatory endorsements, or copies of the applicable policy language, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Authority may require, at any time, complete, certified copies of all required insurance policies, including endorsements affecting the coverage. _
7. Contractors. The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain Errors and Omissions Liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project with a minimum limit of liability of \$1,000,000.
8. Premiums and Assessments. The Authority is not responsible for premiums and assessments on any insurance policy.

AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of Generally Accepted Accounting Principles published by the American Institute of Certified Public Accountants ("GAAP"). The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the construction of the project, and the use, management, operation and maintenance of the real property. Time and effort reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Authority or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Authority or its agents with any relevant information requested and shall permit the Authority or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter

under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following the later of final disbursement by the Authority and the final year to which the particular records pertain. The records shall be subject to examination and audit by the Authority and the Bureau of State Audits during the retention periods.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee agreement with each contractor shall require the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Authority may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

After completing the project, the grantee shall promptly conduct a final financial and compliance audit of revenue and expenditures. An independent Certified Public Accountant shall conduct the audit and prepare a report in compliance with GAAP. In place of performing a separate audit, the grantee may submit to the Authority, within a time that the Authority specifies, a copy of the grantee's federal "single audit."

COMPUTER SOFTWARE

The grantee certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this agreement, Authority funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

NONDISCRIMINATION

During the performance of this agreement, the grantee and its contractors shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The grantee shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated

thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the Authority to implement such article. The grantee shall permit access by representatives of the Department of Fair Employment and Housing and the Authority upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Authority shall require to ascertain compliance with this clause. The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

The grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this agreement.

PREVAILING WAGE

Work done under this grant agreement may be subject to the prevailing wage and other related requirements of the California Labor Code, Division 2, Part 7, Chapter 1, sections 1720-1861. If required by law to do so, the grantee shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations.

The grantee shall review applicable statutory provisions and the regulations adopted under the provisions and the information available on the Department of Industrial Relations website (<http://www.dir.ca.gov/Public-Works/PublicWorks.html>) to determine its responsibilities. For additional information, the grantee may also review the State Coastal Conservancy's publication, *Information on Current Status of Prevailing Wage Laws for State Coastal Conservancy Grantees (March 2015)*, available from the Authority on request.

INDEPENDENT CAPACITY

The grantee, and the agents and employees of grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the Authority.

ASSIGNMENT

Without the written consent of the Executive Officer, the grantee may not assign this agreement in whole or in part.

TIMELINESS

Time is of the essence in this agreement.

EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate an Authority project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

AMENDMENT

Except as expressly provided in this agreement, no changes in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

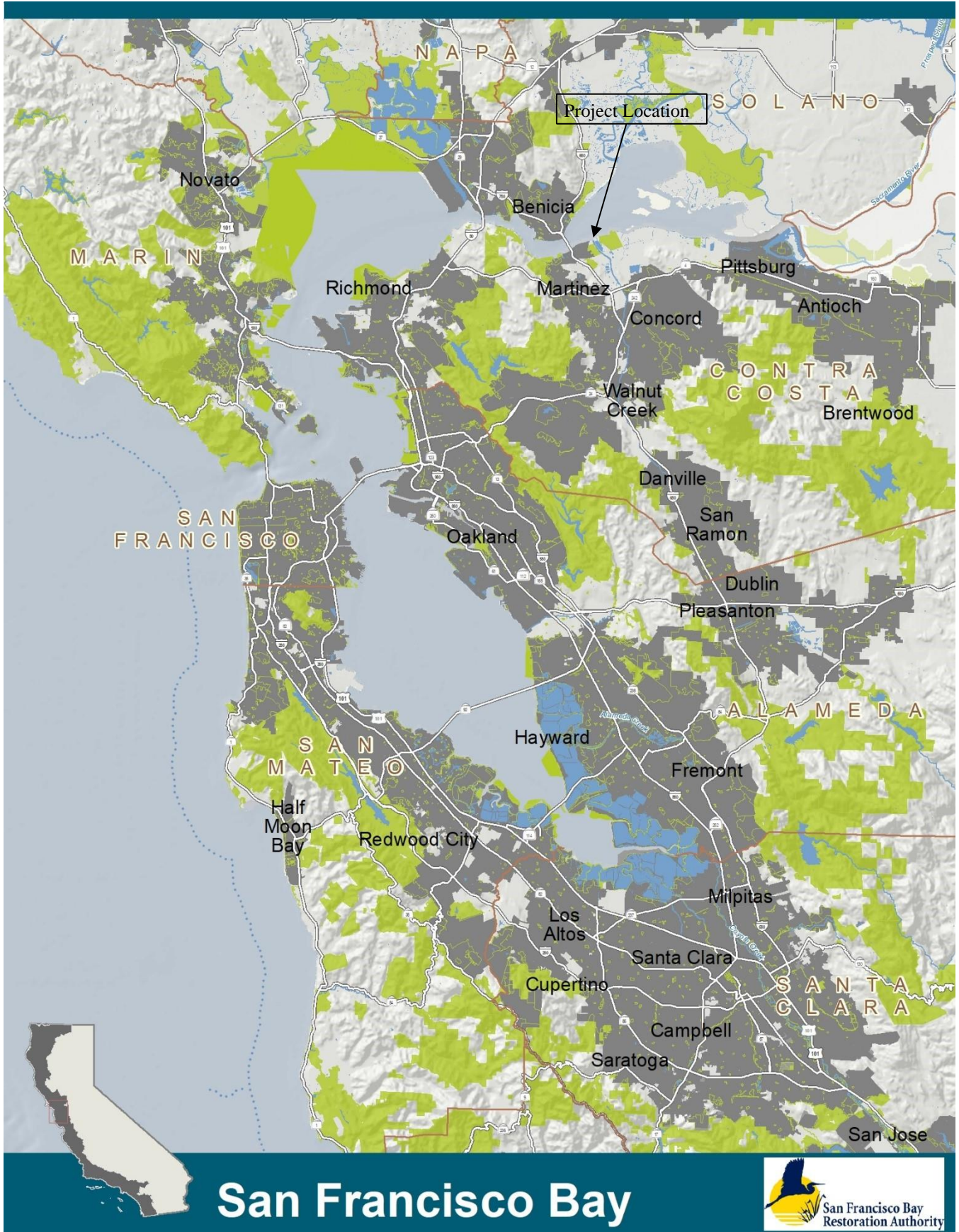
LOCUS

This agreement is deemed to be entered into in the County of Alameda.

SURVIVAL

The obligations in the INDEMNIFICATION AND HOLD HARMLESS section, above, shall survive the termination of this agreement.

Exhibit A



San Francisco Bay





SOURCE: Digital Globe, 2017

Lower Walnut Creek Restoration . D170378

Figure 1
Location Map

Exhibit B

SAN FRANCISCO BAY RESTORATION AUTHORITY

Staff Recommendation
December 06, 2019

LOWER WALNUT CREEK RESTORATION PROJECT

Project No. RA-013
Project Manager: Adrien Baudrimont

RECOMMENDED ACTION: Authorization to disburse up to \$7,929,855 to the Contra Costa County Flood Control and Water Conservation District (District) to implement the North and South reaches of the Lower Walnut Creek Restoration Project, consisting of restoration and enhancement of brackish tidal wetlands and adjacent uplands along the southern shore of Suisun Bay, Walnut Creek and Pacheco Creek in Contra Costa County; and adoption of findings pursuant to the California Environmental Quality Act.

LOCATION: Lower Walnut Creek, 3 miles east of the City of Martinez, Contra Costa County; Measure AA Region: East Bay.

MEASURE AA PROGRAM CATEGORY: Vital Fish, Bird and Wildlife Habitat Program; Integrated Flood Protection Program; and Shoreline Public Access Program.

EXHIBITS

Exhibit 1: [Project Location and Site Map](#)

Exhibit 2: [Project Designs and Photographs](#)

Exhibit 3: [Final Initial Study/Notice of Intent to Adopt a Mitigated Negative Declaration for the Lower Walnut Creek Restoration Project](#)

Exhibit 4: [Project Letters](#)

RESOLUTION AND FINDINGS:

Staff recommends that the San Francisco Bay Restoration Authority adopt the following resolution pursuant to the San Francisco Bay Restoration Authority Act, Gov. Code § 66700 - 66706:

“The San Francisco Bay Restoration Authority hereby authorizes the disbursement of an amount not to exceed seven million, nine hundred twenty-nine thousand, eight hundred and fifty-five

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dollars (\$7,929,855) to the Contra Costa County Flood Control and Water Conservation District (District) to implement the North and South reaches of the Lower Walnut Creek Restoration Project, consisting of restoration and enhancement of brackish tidal wetlands and adjacent uplands along the southern shore of Suisun Bay, Walnut Creek and Pacheco Creek in Contra Costa County. Prior to commencement of the project, the grantee shall submit for the review and written approval of the Executive Officer of the Authority the following:

1. A detailed work program, schedule, and budget.
2. Names and qualifications of any contractors to be employed in carrying out the project.
3. A plan for acknowledgement of Authority funding.
4. Evidence that all permits and approvals required to implement the project have been obtained.
5. Evidence that the grantee has entered into a project labor agreement consistent with San Francisco Bay Restoration Authority Resolution 22."

Staff further recommends that the Authority adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the San Francisco Bay Restoration Authority hereby finds that:

1. The proposed authorization is consistent with the San Francisco Bay Restoration Authority Act, Gov. Code § 66700 - 66706.
2. The proposed authorization is consistent with The San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (Measure AA).
3. The Authority has considered the “Final Initial Study/Notice of Intent to Adopt a Mitigated Negative Declaration for the Lower Walnut Creek Restoration Project” (MND) adopted by the District on November 19, 2019 and attached to the accompanying staff recommendation as Exhibit 3, and comments received, and finds that on the basis of the whole record, the proposed project avoids, reduces or mitigates any possible significant environmental effect of the project and there is no substantial evidence that the proposed project, as mitigated, will have a significant effect on the environment.”

PROJECT SUMMARY:

Staff recommends the disbursement of up to \$7,929,855 to the Contra Costa County Flood Control and Water Conservation District (District) to implement the North and South reaches of the Lower Walnut Creek Restoration Project (project). The project will restore and enhance brackish tidal wetlands and adjacent uplands along the southern shore of Suisun Bay, Walnut Creek and Pacheco Creek in Contra Costa County. The project will improve habitat quality, diversity, and connectivity along 3.2 miles of creek channel (up to 279 acres). In the South Reach, the project will set the levees back from the channel to restore habitat and provide modest levels of flood protection. The sides of the setback levee will be gently sloped to support a wide marsh to upland transition, to be fed by natural deposition of sediment from the creek. The design will limit the need for periodic dredging to maintain the flood protection benefits. Public trails and associated amenities will offer visitors opportunities for wildlife-compatible

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recreation, environmental educational and broad vistas of the project area, Suisun Bay and Mount Diablo. The District is partnering with the John Muir Land Trust (JMLT) for the public access component.

The design seeks long term ecological resilience by taking advantage of regionally rare, site specific opportunities for increasing baylands resilience, such as undeveloped higher elevation areas (created by past dredging events), proximity to watershed supply of freshwater and sediments, and nearby large natural marshes. The site offers opportunities to enhance and restore estuarine wetlands that have suffered large historic losses. This reduction in habitat area threatens native marsh-dependent fish and wildlife species, including special status species such as salmonids, salt marsh harvest mouse, Ridgway's rail, and California black rail. Loss of wetlands caused habitat fragmentation which limits genetic diversity between isolated populations, further threatening their viability. The project improves habitat connectivity by approximately doubling the width of marsh corridor along the Walnut Creek channel and helping fill a nearly mile-wide gap between two large historic tidal marshes on either side of the site along the shoreline of Suisun Bay.

The proposed project will set levees back from the channel to restore wetlands habitat and provide modest levels of flood protection. The current configurations of Walnut Creek and Pacheco Creek are remnants of a traditional engineered flood protection project implemented by the U.S. Army Corps of Engineers (USACE) in the 1960s. Ultimately, the USACE project didn't achieve the design level of flood protection and much higher-than-expected creek sedimentation resulted in the need for periodic dredging to maintain flow capacity. The project ultimately results in modest improvements in flood risk reduction, while taking advantage of natural sediment processes to create new habitat and reduce dredging needs.

Lastly, the Lower Walnut Creek Restoration Project is in an area with limited public shoreline access. The project will implement an extensive network of trails and associated amenities, offering wildlife-compatible recreation and broad views of the restored wetland habitats, Suisun Bay and Mount Diablo. The project also provides an opportunity to link two major regional trails (Iron Horse Trail and San Francisco Bay Trail), allowing visitors on both trail systems to experience the restored habitats and connect to the project trail network.

For planning and design purposes the project area is divided into three reaches: South, Middle, and North reaches. **Restoration Authority funds will be dedicated to restoring the South and North reaches only**, which are fully separable from the Middle Reach. The Middle Reach will be implemented with separate funding in a later phase of the project.

Restoration

The overall restoration portion of the project will create and enhance a 279-acre mosaic of tidal marsh and channels, adjacent terrestrial lowlands, and uplands to support a diversity of plant communities and wildlife species. The project will restore and enhance approximately 168 acres of tidal wetlands, 23 acres of seasonal wetlands, and 82 acres of transitional and upland areas (Exhibit 2, Figure 1). The project is in the brackish part of the San Francisco estuary, where freshwater flows from the Sacramento-San Joaquin Delta mix with saline waters from San Francisco Bay. Tidal marsh in this mixing zone is habitat for protected species and supports high primary productivity that provides food for many native fish species. Adjacent seasonal wetlands and upland/transitional areas provide a rare ecological opportunity for unique habitat combinations that were once more prevalent at the Bay edge. The upland areas also provide high tide refugia for sensitive species and add to resiliency to sea level rise. Approximately 6 acres will support public trails and maintenance access.

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In the South reach, the restoration portion of the project (approximately 47 acres) will be accomplished by breaching and lowering levees to reintroduce the tides to diked former baylands, excavating tidal channels, and constructing a new setback levee for flood protection (Exhibit 2, Figure 4). The sides of the setback levee will be gently sloped to support a wide marsh to upland transition.

In the North Reach (approximately 232 acres), restoration will be accomplished by breaching and lowering berms, excavating to create new tidal wetlands and channels, and grading existing upland areas to create a diverse landscape of lowland terrestrial habitats, including seasonal wetlands, and uplands integrated with the tidal wetlands (Exhibit 2, Figure 5). An existing undersized culvert beneath the TransMontaigne Access Road will be enlarged to allow full tidal flows to the restored wetlands. The District's access road will be relocated to increase the connectivity of restored habitats and to improve maintenance access to a buried outfall pipeline. The project includes a pre-construction program of invasive plant species control, onsite propagation of native plant material, and extensive revegetation with native plant species, particularly in the lowland terrestrial and upland habitats. Invasive plant species control and revegetation with native plant species will increase the abundance of native plants in the North and South reaches, including along Pacheco Creek. To balance earthwork cut and fill quantities onsite, fill will be transported between the North and South reaches and implementation of the two reaches will be closely integrated.

Flood Control

The flood control component of the project will provide appropriate levels of flood protection that are suited to the existing land uses and are maintained by natural geomorphic processes without the need for periodic large-scale dredging. In the South Reach, a new setback levee, approximately 3,500 feet long, will be constructed along Walnut Creek. Most of the existing levee will be lowered to create tidal marsh and upland transition habitat. Overall, the project will improve flow conveyance and reduce flood risk by a small amount. Buried utilities will be carefully protected in place or relocated over the new levee in coordination with the utility owner(s).

Public Access

In partnership with the John Muir Land Trust (JMLT), the District will implement public access for the North Reach (Pacheco Marsh). The Pacheco Marsh public access concept (Exhibit 2, Figure 2) includes an elevated vista point compliant with the Americans with Disabilities Act (ADA). Sitting 30 feet above the Bay, it offers visitors broad views of Pacheco Marsh, Suisun Bay, and Mount Diablo (Exhibit 2, Figure 3). Hikers can follow 2.6-miles of trails with boardwalk sections, two bridges, and interpretive signs about the marsh and the restoration process. A seasonal trail to two bird blinds will provide birders and photographers close access to habitat areas. A paved parking/staging area will accommodate approximately 30 cars and provide a restroom facility.

The East Bay Regional Parks District (EBRPD) is evaluating the potential for extension of the popular Iron Horse Trail through the project site. The alignment of the trail extension runs on top of the proposed setback levee in the South Reach, across Pacheco Creek, then west and north to Waterbird Regional Preserve (Exhibit 1, Figure 1). The District has been working closely with the EBRPD to ensure consistency with future public access through the project site. The proposed South Reach setback levee has been specifically designed to support a public trail on top of it.

The District has experience in successfully delivering large grant-funded projects. The District, and program manager Paul Detjens, recently completed the 62-acre Upper Sand Creek Basin

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Restoration Project, a \$15 million flood protection and riparian habitat restoration project that was partially funded by state grants. The project was delivered on time using available funds. In 2017, the District completed a 90% state-grant-funded levee rehabilitation project in North Richmond that significantly lowers flood risk while preserving riparian and wetland vegetation. JMLT and its executive director, Linus Eukel, have demonstrated successful habitat preservation and public access project on 15 major properties. This includes the 1,185-acre Fernandez Ranch property in Martinez, Ca. which resulted in 1.5 miles of ADA-accessible trails, three picnic areas, and a 160' pedestrian and emergency vehicle bridge.

The project has a broad support (Exhibit 4). Extensive outreach was conducted to ensure community engagement and input. A Stakeholder Advisory Group made up of representatives of local government, businesses, nonprofit organizations, and utilities met multiple times during the planning process. District staff have led many site tours, convened public workshops, and responded to invitations to present the project to a variety of County government, nonprofit, flood management, and university groups. Finally, the project has enjoyed coverage in the traditional media (newspaper, radio, and Bay Nature Magazine) and on social media. The project has an active web page at www.lowerwalnutcreek.org, periodic Facebook posts, and a well received series of videos on YouTube titled "Lower Walnut Creek Adventures."

Site Description:

The project site is located 3 miles east of the City of Martinez, along the lowest 2.5 miles of Walnut Creek and 1.5 miles of Pacheco Creek (Exhibit 1, Figure 1, and Exhibit 2, Figure 1). Walnut Creek and Pacheco Creek are tidally-influenced within the project area.

Land use in the project vicinity is primarily industrial and open space and has been disturbed by human activities including dredging, levee-building, other filling, and grading. The resulting landscape is lacking much of the structure and functions (connectivity, natural hydrology, native soils, etc.) that characterize native plant and wildlife communities. In the South Reach, a flood control levee separates Walnut Creek from its historic tidal floodplain. Behind the levee is a poorly-drained basin, disconnected from the tides and supporting patches of un-vegetated salt flats, stressed and low-productivity brackish marsh, and seasonal wetland vegetation intermixed with ruderal upland vegetation. Pacheco Creek is bordered by tidal brackish marsh with flood protection levees on both sides. Invasive, non-native plants are present within the area and dominate the uplands. The North Reach is subdivided by several remnant berms originally used to contain material dredged from Walnut Creek, creating a series of poorly drained basins disconnected from the creek and the tides. Past disposal of clean dredged material created high ground up to 12 feet above the surrounding tidal marsh. Invasive, non-native plants are present within the marsh, non-tidal wetlands and waters, and upland transition habitats. As in the South Reach, upland communities are dominated by invasive non-native plants. Project lands are owned and managed by the District, except for small areas for which the District will be granted an easement (from Conco Inc.) or lease (State Lands Commission).

PROJECT FINANCING

San Francisco Bay Restoration Authority	\$7,929,855
Contra Costa County Flood Control District	\$2,639,696
John Muir Land Trust (JMLT)	\$2,000,000

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CA Department of Fish and Wildlife (CDFW)	\$276,651
U.S. Environmental Protection Agency (EPA)	\$1,376,281
National Fish and Wildlife Foundation (NFWF)	\$1,400,000
U.S. Fish and Wildlife Service (USFWS) - Pending	\$970,000
Project Total	\$16,592,483

Restoration Authority funds will be dedicated to restoring the South and North reaches only. In addition, the District leveraged a suite of local, state and federal funds towards the project, as itemized above. The JMLT funds are from donations, dedicated to the North Reach public access construction. The CDFW matching funds are from a Proposition 1 Delta Water Quality and Ecosystem Restoration Grant Program and will support project management, design, environmental compliance, and regulatory permitting. The EPA match comes from a San Francisco Water Quality Improvement Grant to support design, interim vegetation management, and partial construction of the South Reach of the project. The NFWF matching funds are from a National Coastal Resilience Fund and will support construction of the North and South reaches. The pending USFWS matching funds come from a National Coastal Wetlands Conservation Grant and will support construction of the North reach only.

CONSISTENCY WITH AUTHORITY'S ENABLING LEGISLATION, THE SAN FRANCISCO BAY RESTORATION AUTHORITY ACT:

The proposed project is consistent with Section 66704.5(a), (b), and (e) of the San Francisco Bay Restoration Authority Act, Government Code Sections 66700-66706.

Under section 66704.5(a), "[t]he Authority may award grants to public and private entities, including, but not limited to, owners and operators of shoreline parcels in the San Francisco Bay area, excluding the Delta primary zone, for eligible projects in the counties within the authority's jurisdiction." The District is a public agency that owns and operates shoreline parcels in the northern portion of the East Bay region of the San Francisco Bay area, for the purpose of constructing and maintaining regional flood control basins, channels, and creeks.

Under section 66704.5(b), "[a]n eligible project shall do at least one of the following: (1) Restore, protect, or enhance tidal wetlands, managed ponds, or natural habitats on the shoreline in the San Francisco Bay area, excluding the Delta primary zone. (2) Build or enhance shoreline levees or other flood management features that are part of a project to restore, enhance, or protect tidal wetlands, managed ponds, or natural habitats identified in paragraph (1). (3) Provide or improve public access or recreational amenities that are part of a project to restore, enhance, or protect tidal wetlands, managed ponds, or natural habitats identified in paragraph (1)." The proposed project restores and enhances brackish tidal wetlands and adjacent uplands along the southern shore of Suisun Bay, Walnut Creek and Pacheco Creek. It results in modest improvements in flood risk reduction, while taking advantage of natural sediment processes to create new habitat and reduce dredging needs. Public trails and associated amenities will offer visitors opportunities for wildlife-compatible recreation, environmental educational and broad vistas of the project area, Suisun Bay and Mount Diablo.

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Under section 66704.5(e), “[g]rants awarded pursuant to subdivision (a) may be used to support all phases of planning, construction, monitoring, operation, and maintenance for projects that are eligible pursuant to subdivision (b).” The proposed project is a construction project that is consistent with this section.

CONSISTENCY WITH MEASURE AA PROGRAMS AND ACTIVITIES:

Under Measure AA’s “Vital Fish, Bird and Wildlife Habitat Program... to significantly improve wildlife habitat that will support and increase vital populations of fish, birds, and other wildlife in and around the Bay,” this project will restore approximately 168 acres of tidal wetlands, 23 acres of seasonal wetlands, and 82 acres of transitional and upland areas to a more natural condition while improving both recreation and habitat values. The project includes invasive plant species control, propagation of native plant material, and extensive revegetation with native plant species. Once restored, the new brackish tidal wetland and adjacent uplands environment has the potential to provide habitat for a diversity of plant communities and wildlife species, including special status species such as salmonids, salt marsh harvest mouse, Ridgway’s rail, and California black rail.

Under Measure AA’s “Integrated Flood Protection Program...use natural habitats to protect communities along the Bay’s shoreline from the risks of severe coastal flooding caused by storms and high water levels,” this project will “[p]rovide nature-based flood protection through wetland and habitat restoration along the Bay’s edge and at creek outlets that flow to the Bay.” The current leveed configurations of Walnut Creek and Pacheco Creek are remnants of a traditional engineered flood protection project implemented by the USACE in the 1960s. Ultimately, the USACE project didn’t achieve the design level of flood protection and much higher-than-expected creek sedimentation required periodic dredging to maintain flow capacity. The proposed project will breach and lower existing levees to reintroduce the tides to diked former baylands and create tidal marsh and upland transition habitat, excavate tidal channels, and construct a new setback levee for flood protection. The project ultimately results in improved flow conveyance and modest improvements in flood risk reduction, and incorporates sustainable natural geomorphic processes without periodic large-scale dredging.

Under Measure AA’s “Shoreline Public Access Program... to enhance the quality of life of Bay Area residents, including those with disabilities, through safer and improved public access, as part of and compatible with wildlife habitat restoration projects in and around the Bay,” this project will “[c]onstruct new, repair existing... public access trails, signs, and related facilities along the shoreline and manage these public access facilities.” The public access portion of the proposed project includes an ADA compliant elevated vista point sitting 30 feet above the Bay; 2.6-miles of trails with boardwalk sections, bridges, and interpretive signs about the marsh and restoration process; a seasonal trail to two bird blinds; and a paved parking/staging area with a restroom facility. In addition, the project is gauging public support for a kayak launch point within Lower Walnut Creek which would serve as a connection to the Bay Water Trail. The project is also coordinating with EBRPD to connect the regional Iron Horse Trail, which currently ends 1.5 miles south of the project site, to the Waterbird Regional Preserve and the Bay Trail.

CONSISTENCY WITH MEASURE AA PRIORITIZATION CRITERIA:

1. **Greatest positive impact.**

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The project provides multiple benefits, combining habitat restoration with improved flood protection and public access. Integration of tidal floodplain restoration and flood protection is a modern model for flood management, replacing the 1960s-era approach previously imposed at the site that required periodic dredging to maintain flood flow capacity. In addition, the proposed public access improvements at the North Reach are critically located and will serve as a destination for a community with no shoreline trail access for 10 miles (between Radke Martinez Regional Shoreline and Bay Point Regional Shoreline). The 2.4 miles of public trails and elevated observation areas will offer visitors the benefits of wildlife-compatible recreation and expansive views. Furthermore, the project lays the groundwork for expanding and connecting regional trail networks to outdoor recreation, wildlife, and carbon-free commute corridors.

With the Authority's support, the project will realize the most significant restoration on the south Suisun Bay shoreline, at the mouth of the largest watershed in Contra Costa County. Implementation of the project will restore and enhance a 279-acre mosaic of brackish tidal wetlands, seasonal wetlands and adjacent uplands for threatened and endangered species. Project benefits occur along 3.2 linear miles of creek channel, by re-connecting the creek to its tidal floodplain, and substantially improving habitat connectivity between two large historic marshes along the Suisun Bay shoreline. By enhancing an area of higher-elevation dredged material, the site provides a rare opportunity to restore tidal wetlands and adjacent uplands, an ecologically valuable ecotone that has largely been lost around the Bay.

2. **Greatest long-term impact.**

Restoration of wetlands at the site will provide long-term benefits to the San Francisco Bay ecosystem, including contributing to recovery of threatened and endangered species (Recovery Plan for Tidal Marsh Ecosystem of Northern and Central California, USFWS 2013; Baylands Ecosystem Habitat Goals Project, 1999; Baylands Ecosystem Habitat Goals Project Science Update 2015). Creation of long-term, sustainable benefits is an explicit project objective and was carefully considered during plan development. Early in planning, the project coordinated with regional baylands experts to develop strategies for improving long-term resilience of the lower Walnut Creek landscape to support ecosystem services and wildlife habitat under changing future conditions. This coordination occurred primarily via the Flood Control 2.0 project, funded by the US EPA and led by scientists from the San Francisco Estuary Institute (SFEI) in partnership with the District.

The project plan draws from recommendations in Flood Control 2.0's Resilient Landscape Vision for Lower Walnut Creek (SFEI 2016) and from the Baylands Ecosystem Goals Science Update (Goals Project 2015). With input from over 100 scientists, the Goals Project identified science-based actions to support ecosystem functions and services in light of expected climate and other environmental changes. The Goals Project identifies the following recommendations (in **bold**), all of which have been incorporated into the project plan:

- **Restore estuary-watershed connections to nourish the baylands with sediments and freshwater.** The project incorporates multiple breaches and channels along Walnut Creek to reconnect the flow of freshwater, sediment, and biota between

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the creek and the baylands. The high sediment supply delivered from the Walnut Creek watershed (second highest of the San Francisco Bay watersheds; SFEI 2016), makes the restored marshes highly resilient to sea-level rise.

- **Design complexity and connectivity into the baylands landscape at various spatial scales.** The project provides for a more continuous band of wetlands along Walnut Creek and connects along the Bay shoreline to large historic marshes (Exhibit 2, Figure 6). Grading of the North Reach has been thoughtfully designed to provide habitat complexity (e.g., seasonal wetlands, alkali flat, moist grassland, upland grassland and scrub in the upland transition).
- **Restore and protect complete tidal wetlands systems.** The project restores a continuum of habitats from tidal channels through tidal marshes and adjacent terrestrial areas. The restoration is laid out with attention to enhancing interactions across the habitat ecotones. Higher elevation areas adjacent to the marsh will provide terrestrial species with refuge from higher tides and more extreme high-water events with climate change.
- **Plan for the baylands to migrate.** The project includes large areas of upland transition that provide space for natural marsh migration with sea level rise. This space coupled with Walnut Creek's high sediment load, make the site resilient to even high rates of SLR (Exhibit 2, Figure 7).
- **Reduce stressors by removing invasive vegetation.** Invasive vegetation removal before, during, and after construction is a key component of project implementation.

In addition, public access elements of the project have been designed with trails and other structures elevated to account for future sea level rise. Coordination with EBRPD staff was prioritized to ensure the South Reach levee configuration is compatible with future extension of the Iron Horse trail through the project area.

3. **Leveraging resources and partnerships.**

Authority grant funds for construction will provide the critical piece needed to implement the North and South Reaches. Matching funds provided by the District, U.S. EPA, CDFW, and JMLT indicate the high level of support for the project. (See Project Financing section above for a list of all the funding sources that will be applied to the proposed project.) Beyond the immediate term, the District will leverage its partnership with EBRPD to facilitate a planned extension of the popular Iron Horse trail through the project area. The setback levee configuration was planned in close coordination with EBRPD so it will be able to accommodate the future trail. In addition, the project leverages a public/private partnership with Conco Inc. to locate much of the proposed South Reach setback levee on Conco property, allowing for an expanded restoration area.

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4. **Economically disadvantaged communities.**

The project area is part of the community east of Martinez, identified as an economically disadvantaged community (EDC) by the Authority (EDC Map, 2017). The project will benefit the community by providing a destination to access the Bay shoreline, the associated trails and other recreational benefits, educational opportunities, and open space.

5. **Benefits to economy.**

The project will benefit the region's economy by creating employment opportunities during construction and creating long-lasting indirect benefits post-construction (e.g., trail users and bird watchers at Pacheco Marsh). The construction work will be competitively bid and District contractors will pay prevailing wage. Additionally, the grant program requires a Project Labor Agreement (PLA). The District is very familiar with administering PLAs, and routinely includes them on projects that are greater than \$1 million. Construction and associated activities will provide direct benefits through employment of dozens of workers, and indirect benefits through associated spending by those workers. The project will contribute to workforce development and needed capacity-building for restoration specialty areas such as the project's innovative native plant propagation and planting methods.

New setback levees with gentle ecotone slopes will provide moderate flood risk reduction for the Central Contra Costa Sanitary District facility, with economic benefits associated with avoided flood damages.

6. **Engage youth and young adults.**

Once the proposed public access features are constructed and open to the public, Pacheco Marsh will become a premiere destination for educating youth about marsh ecosystems and efforts to reverse the effects of past human impact and restore critical wetlands to their natural state. The project will feature educational kiosks and displays that tell these stories at the entrance to the site. Signage and displays along pathways will engage young people as they walk the property and experience different sections of the ecosystem.

JMLT will reach out to local schools to facilitate field trips and guided tours by local experts. Volunteer opportunities will involve young adults in the care and maintenance of the property. As successfully done on other properties, JMLT will engage students to help develop tours of Pacheco Marsh that are enabled via mobile app and smart phones (using the Vizzit platform). These tours will be available to all visitors and allow for self-guided exploration that teaches the lessons of Pacheco Marsh and the importance of the marsh ecosystem.

7. **Monitoring, maintenance, and stewardship.**

The project is designed to minimize the need for active operations and ongoing maintenance. The District will perform routine observation and maintenance as part of their regular levee monitoring program. Anticipated levee maintenance includes mowing and weed control and repair of erosion sites. Long term operations and maintenance will be funded using ad valorem tax revenue collected from property owners in the watershed. The project will use adaptive management activities to increase the efficiency and effectiveness of restoration strategies and to achieve restoration benefits. Native-plant dominated transition habitat is

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expensive to achieve using a traditional nursery and container-plant approach. The project is working with experienced specialists and Save the Bay to economically “scale up” approaches successfully pioneered at other sites. The project proposes use of fast-growing native plants and incorporation of onsite farming methods for plant propagation, with the potential for significant cost savings. Lessons learned will be documented for the benefit of future projects. Water levels will be monitored to allow the District to operate the improved culvert for target hydrology. Monitoring will be coordinated with regional monitoring efforts. The District is the current site manager and will manage the future restoration and flood protection levees; JMLT will manage the public access facilities.

8. **Coastal Conservancy’s San Francisco Bay Area Conservancy Program.**

The project is consistent with the San Francisco Bay Area Conservancy Program criteria because it:

(1) is supported by adopted regional plans (Baylands Ecosystem Habitat Goals Report (1999) pp. 94, 104-105, Baylands Goals Project Update (2016) pp. 133-136, USFWS Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California (2013), Comprehensive

Conservation and Management Plan (2016), and the San Francisco Basin (Region 2) Water Quality Control Plan (May 2017) pp. 2-2 and 4-90);

(2) serves a regional constituency (will benefit regional populations of fish and wildlife, will serve as a regional public access and recreation destination, and will complete regional trail connections);

(3) can be implemented in a timely way (with construction beginning soon after initiation of grant funding and complete by 2022);

(4) provides opportunities for habitat, flood protection, and public access benefits that could be lost if the project is not quickly implemented (earlier restoration will reduce damage from unauthorized motor bikes and increase estuarine sedimentation for habitat resilience); and

(5) includes matching funds from other sources of funding (the District, CDFW, and U.S. EPA matching funds and public/private partnership benefits as described in the Project Financing section.

9. **San Francisco Bay Conservation and Development Commission’s Coastal Management Program.**

The project is consistent with the San Francisco Bay Conservation and Development Commission’s (BCDC’s) Coastal Management Program policies. The project furthers the resource protection, public access, climate change resilience, and other goals of the Bay Plan. The North Reach is currently mapped as water-related industry, reflecting its past zoning and failed past attempts to develop the marsh for industrial use. District staff met with BCDC staff on April 12, 2018 to discuss a Bay Plan amendment to designate the North Reach as waterfront park/beach, similar to other shoreline areas in the vicinity, and BCDC

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staff are supportive. During the permitting stage, the project will request a routine amendment to the Bay Plan to reflect the proposed tidal marsh and park land use. This amendment would be in place prior to project construction. The project is consistent with the Commission suggestions for this stretch of shoreline to “enhance scenic qualities, preserve views and increase public access.”

10. **San Francisco Bay Joint Venture’s Implementation Strategy.**

The project is designated as a Tier 1 priority project in the San Francisco Bay Joint Venture’s priority projects list as of the date of this application. The project meets the Joint Venture’s primary goal of protecting, restoring and enhancing wetlands and associated uplands and overall objectives for improving the management of bay habitats and monitoring to improve future restoration projects.

COMPLIANCE WITH CEQA:

In order to comply with the California Environmental Quality Act (CEQA), the Contra Costa County Flood Control and Water Conservation District prepared the “Final Initial Study/Notice of Intent to Adopt a Mitigated Negative Declaration for the Lower Walnut Creek Restoration Project,” (MND) to evaluate the potential environmental impacts of the project. The District Board of Directors adopted the MND and approved the project on November 19, 2019.

The MND indicates that the proposed project will not have a significant effect on the environment with incorporation of certain mitigation measures. The potential effects for which mitigation is proposed are in the areas of air quality, biological resources, cultural resources, hazards and hazardous materials, hydrology and water quality, recreation, tribal cultural resources and mandatory findings of significance. The District and its contractors will be responsible for compliance with the mitigation measures. The potential significant effects on air quality, biological resources, cultural resources, and hazards and hazardous materials, will be mitigated by the measures listed below. The potential significant effects on hydrology and water quality, recreation, tribal cultural resources and mandatory findings of significance will be also mitigated by these same measures. The following is a summary of potential impacts and planned mitigation for the project.

Air Quality - The project would result in vehicle emissions and fugitive dust during construction.

Mitigation includes implementing Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures to reduce emissions of fugitive dust and equipment exhaust. Some of the measures are: watering exposed surfaces twice a day; covering haul trucks; limiting traffic speed on unpaved roads; limiting equipment idling time; among others.

Biological Resources - The project would result in: (1) potential impacts on western pond turtle; (2) potential impacts on special-status birds; (3) potential impacts on California black rail and Ridgway’s rail; (4) potential impacts on salt marsh harvest mouse and Suisun shrew; (5) potential impacts on special-status plants; (6) potential impacts on special-status fish; (7) potential impacts on sensitive natural communities; (8) potential impacts on wetlands and other waters; and (9) potential construction-related impacts on movement of native resident or migratory fish species or established native resident or migratory wildlife corridors.

(1) Construction-related impacts on western pond turtle would be potentially significant.

Mitigation measures would reduce construction-related impacts on western pond turtle to

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a less-than-significant level by providing biological monitoring within 150 feet of sensitive aquatic sites; environmental training to construction personnel; general protection measures, including speed limits on all levees and roads during construction; and specific survey and relocation measures for western pond turtles, if encountered. Operational and long-term effects of the project on western pond turtle would be less than significant.

- (2) Construction-related impacts on tricolored blackbird, short-eared owl, Northern harrier, saltmarsh common yellowthroat, Suisun song sparrow, and nesting birds protected by the Migratory Bird Treaty Act would be potentially significant. However, mitigation measures would reduce potential construction-related impacts to nesting special-status birds to a less-than-significant level by providing environmental training to construction personnel, providing general protection measures, and requiring avoidance of construction-related work during the nesting bird season. If avoidance of the nesting season is not possible, then pre-construction nesting bird surveys and establishment of no-construction buffer zones around active bird nests would avoid or minimize the potential for this impact to occur. Operational and long-term effects of the project on tricolored blackbird, short-eared owl, Northern harrier, saltmarsh common yellowthroat, Suisun song sparrow, and nesting birds protected by the Migratory Bird Treaty Act would be less than significant.
- (3) Temporary construction-related impacts would result in potentially significant impacts on California black rail and Ridgway's rail. However, implementation of mitigation measures would reduce potential construction-related impacts to Ridgway's rail and black rail to less-than-significant by providing environmental training to construction personnel, providing general protection measures, avoiding disturbance to rail nesting habitat, conducting pre-construction protocol surveys to identify any active nests, and stopping work if project activities disturb nesting rails. Operational and long-term effects of the project on California black rail and Ridgway's rail would be less than significant.
- (4) Construction-related impacts and ongoing Operation and Maintenance (O&M)- related impacts on salt marsh harvest mouse and Suisun shrew would be potentially significant. However, implementation of mitigation measures would reduce potential construction and ongoing O&M impacts to salt marsh harvest mouse and Suisun shrew to a less-than-significant level by providing environmental training to construction personnel, providing general protection measures, conducting pre-construction surveys, identification and avoidance of suitable habitat for the species, and where avoidance is not possible, using hand tools to clear vegetation. Further, suitable marsh habitat will be protected during work activities, silt fencing will separate suitable habitat from adjacent work areas, a biomonitor will be in place to stop work if the species is detected, and work during high tide periods will be avoided. With implementation of these mitigation measures, construction- and ongoing O&M -related impacts would be less than significant.
- (5) Temporary construction-related impacts would result in significant impacts on special status plants, and if special-status plants are present in the areas that have not yet been surveyed, these have potential to be impacted indirectly through changes in site hydrology. However, implementation of mitigation measure would reduce potential

Exhibit B

construction-related impacts to special-status plants and potential indirect impacts to special-status plants due to changes in hydrology to a less-than-significant level. This would be achieved by: conducting pre-construction special-status plant surveys; delineating and avoiding special-status plants within the project work limits by establishing a no-disturbance buffer, including fencing and signage, around the plant to protect it from construction-related activity; compensating for special-status plant impacts that cannot be avoided; and, reporting special-status plant occurrence to the California Natural Diversity Database (CNDDDB). Operational and long-term effects of the project would be less than significant.

- (6) Construction-related impacts on special-status fish would be potentially significant. However, implementation of mitigation measures would reduce the impact of project construction on special-status fish to less-than-significant by restricting the timing of inwater work to periods in which special-status aquatic species are unlikely to be present, and by ensuring the water quality effects of in-water work are no threat to aquatic species and occur at less than significant levels. Operational and long-term effects of the project would be less than significant.
- (7) Construction-related impacts on sensitive natural communities would be potentially significant. Implementation of mitigation measures would reduce construction-related impacts to less than significant by ensuring that sensitive natural communities are delineated and, to the extent feasible, avoided; minimizing impacts by developing and implementing an erosion control plan and SWPPP; using silt curtains to protect submerged aquatic vegetation; avoiding the introduction of non-native, invasive plant species; using only pesticides certified by the USEPA for use in/adjacent to aquatic environments, and monitoring the vegetation and geomorphology for adaptive management to meet the goals of the project. Operational and long-term effects of the project would be less than significant.
- (8) Construction-related activities would potentially significantly impact wetlands and other waters. However, implementation of mitigation measures would reduce impacts to less than significant by isolating the in-water work area to isolate suspended sediments to the work area, restricting work activities to within the construction footprint, and by avoiding

the introduction and spread of weeds. Although the project would include grading and vegetation management activities within potentially jurisdictional wetlands and waters, and temporal loss of wetlands and waters during construction, these activities would support the goals of habitat restoration and would result in a net increase in wetlands and waters. The project would result in long-term benefits, and therefore the potential operational/long-term impact on wetlands and waters is less than significant.
- (9) Construction-related impacts are not expected to significantly impact wildlife movement or wildlife corridors, but would result in potentially significant water quality impacts on migratory fish. However, implementation of mitigation measures would ensure that construction would occur when migratory fish presence is unlikely and water quality impacts associated with in-water construction would be confined to the immediate area of the activity and would reduce potential impacts on migratory fish corridors to less

Exhibit B

than significant. Individual nesting birds could potentially nest on the project site and could be directly or indirectly impacted by the project construction. Implementation of mitigation measures would reduce these impacts to less than significant. Therefore, impacts to terrestrial wildlife corridors resulting from project construction would be less than significant after incorporation of mitigation.

Cultural Resources - The project would result in: (1) potential impacts on archaeological resources; and (2) potential impacts on human remains.

- (1) Implementation of mitigation measures would reduce potentially significant impacts to less than significant with mitigation incorporated. This mitigation would ensure that work halt in the vicinity of a find until a qualified archaeologist can make an assessment and provide additional recommendations if necessary, including contacting Native American tribes.
- (2) Implementation of mitigation measures would reduce potentially significant impacts to less than significant with mitigation incorporated. This shall comply with applicable State laws, including Section 7050.5 of the Health and Safety Code. This would require work to halt in the vicinity of a find and immediate notification of the County coroner. If the coroner determines the human remains are Native American, they would notify the California State Native American Heritage Commission (NAHC), who shall appoint a Most Likely Descendant (MLD) (PRC Section 5097.98).

Hazards and Hazardous Materials - The project would result in potential impacts exposure of public and workers to hazardous materials.

Implementation of mitigation measure would reduce impacts to less than significant with mitigation incorporated. This mitigation measure would establish procedures analyzing the chemical concentrations in dewatering fluids and ensuring the dewatering fluids are disposed of in accordance with all applicable federal and state laws.

Authority staff has independently evaluated the MND, and concurs that there is no substantial evidence that the proposed project will have a significant effect on the environment. Staff therefore recommends that the Authority find that the project, as mitigated, avoids, reduces, or mitigates the possible significant environmental effects of the project to a less-than-significant level and that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment.

Upon approval of the project, Authority staff will file a Notice of Determination.



Restoration Authority

Resolution 22

Supporting the Creation of Quality Jobs through Habitat Restoration, Flood Protection and Public Access Projects

Whereas, the San Francisco Bay Restoration Authority (Authority) is a regional government agency charged with raising and allocating resources for the restoration, enhancement, protection and enjoyment of wetlands and wildlife habitat in the San Francisco Bay and along its shoreline, as well as related public recreational amenities and flood management features; and

Whereas, in June of 2016 voters in the nine county San Francisco Bay Area approved Measure AA which will generate approximately \$500 million in new local revenue to restore wildlife habitat, help improve our region's resilience to climate change by protecting communities, businesses, roads, wastewater treatment plants and other vital infrastructure from flooding due to extreme weather events, increase shoreline public access and more; and this local funding could be used to leverage an equal or greater amount of state, federal and other resources to support Bay restoration projects; and

Whereas, by generating local funds, and potentially other state and federal funds, for Bay restoration, the Authority has the ability not just to restore wildlife habitat, protect communities from flooding and improve public access, but also to create quality jobs for the local workforce that support our mission; and

Whereas, it is in the interest of the Authority and the public it serves to build safe, high-quality projects with a properly trained workforce; and

Whereas, the Authority has the responsibility to promote and oversee efficient project delivery and to monitor the efficient use of public funds, and the timely and successful completion of Authority-funded projects is of the utmost importance to the Authority and the general public; and

Whereas, it is in the interest of the Authority and the public it serves that Authority-funded construction projects proceed without labor disruptions that can cause delay; and to create an effective and efficient mechanism to minimize the possibility of any such disruptions, thereby promoting cost containment and timely completion of projects;

Whereas, the use of project labor agreements will effectuate the Authority's intent to complete Authority-funded construction projects consistent with the goals and purposes set forth above;

NOW, THEREFORE, BE IT RESOLVED that the Authority shall require all grantees of Authority funds to negotiate, enter into and execute a standard project labor agreement with the local Building Trades Council(s) for the applicable county(ies) that covers all work within the craft jurisdictions of the Unions

(e.g. construction, remediation, demolition, alteration, installation, improvement, repair, etc.) for any

Exhibit C

Restoration Authority

construction project where (a) the total cost of the project exceeds \$500,000, and (b) the Authority's funding of the project exceeds ten percent (10%) of the total cost of the project. BE IT FURTHER RESOLVED that such project labor agreement shall provide that (a) All contractors and subcontractors shall recognize the affiliated Unions as the exclusive bargaining representatives of the craft workers employed on the project; (b) All contractors and subcontractors shall use the Union hiring halls for satisfying all project craft needs on the project; (c) The wages, benefits and working conditions of the craft employees performing work on the project shall be governed by the Master Labor Agreements of the Union(s) recognized as the bargaining representative(s) of the applicable craft(s); (d) All contractors and subcontractors shall hire apprentices indentured in the State-approved joint apprenticeship training program(s) for the applicable craft(s) or trade(s) for work on the project in accordance with the apprentice ratios contained in California Labor Code Section 1777.5; (e) The "Helmets to Hardhats" Program shall be used to assist returning Veterans in obtaining employment and training opportunities on the project; and (f) There shall be no strikes or lockouts on the project and a dispute resolution mechanism shall govern any conflicts.

BE IT FURTHER RESOLVED that this Resolution and its provisions shall not apply to a

- AYES: Governing Board Members PINE, CALDWELL, GILOIA, WIENER. grant
- NOES: Governing Board Members SHAWALTER, SUTTER. ee of
- ABSENT: Governing Board Members BALON. Authority
- ABSTENTIONS: Governing Board Members _____ fund

s when the grant ee's project is funded by, sponsored by, or otherwise undertaken in collaboration with, the U.S. Army Corps of Engineers.

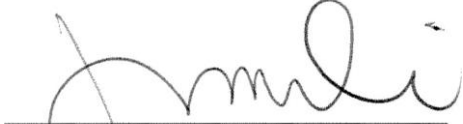
BE IT FURTHER RESOLVED that if after the Authority has exerted all reasonable efforts to secure a project labor agreement for the project without success, has met with, considered, and addressed to the fullest extent feasible, the interests of the applicable Building Trades Council(s), and has made other such efforts as are consistent with carrying out the goals of this policy, and the Governing Board of _____ the Authority finds application of this _____ policy would preclude Authority funding project, then the Governing Board Authority may determine that this _____ for a shall not apply to the particular project at issue. _____ of the policy

PASSED AND ADOPTED by the Governing Board of the San Francisco Bay Restoration Authority at its meeting on November 30, 2016, by the following vote:

Dave Pine
Chair

Restoration Authority

I, Kelly Malinowski, Clerk of the Governing Board of the San Francisco Bay Restoration Authority, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted by the Governing Board of the San Francisco Bay Restoration Authority at its meeting of November 30, 2016, which Resolution is on file in the office of this regional government

A handwritten signature in cursive script, appearing to read 'Kelly Malinowski', written over a horizontal line.

~~Kelly Malinowski~~
entity. Clerk of the Governing Board