

**AGREEMENT
BETWEEN
CENTRAL CONTRA COSTA SANITARY DISTRICT AND
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
FOR the Grayson and Walnut Creeks Levee Improvement PROJECT**

PROJECT NO. 7520-6B8348

This Agreement ("Agreement") is entered into on the ____ day of _____, 2020 ("Effective Date"), between the CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control District ("FCD"), organized under the laws of the State of California, and the CENTRAL CONTRA COSTA SANITARY DISTRICT, ("CCCSD"), a special district organized under the laws of the State of California.

Pursuant to Section 5 of the Contra Costa County Flood Control and Water Conservation District Act, Section 6515 of the California Health and Safety Code, and the applicable provisions of the California Constitution and California Government Code, the parties to this Agreement mutually agree and promise as follows:

1. Purpose: In the 1960s, Walnut and Grayson Creeks surrounding CCCSD's treatment plant located in Martinez were realigned, channelized, and levees were constructed to reduce flood risk in the area. FCD is responsible for the operations of Walnut Creek and Grayson Creek and their levees in the location of the PROJECT. In 2007, the FCD, with the cooperation of CCCSD, constructed the FCD's Interim Protection Measures project, which slightly raised the Walnut and Grayson Creek levees along CCCSD's plant to ensure protection against a 1% chance (100-year) storm event. Now the parties wish to further reduce flood risk in the area of CCCSD's treatment plan by cooperatively raising these levees to provide protection against a 0.2% chance (500-year) storm event with a minimum of 3-foot of freeboard.
2. Project Scope of Work: In general, the work to raise the Walnut and Grayson Creek levees to provide the desired flood protection will entail designing and constructing a larger embankment by importing select levee material, scarifying the top of the existing levee, placing and compacting the material on the existing levee, installing appropriate storm water best management practices per the project's Stormwater Pollution Prevention Plan ("SWPPP"), and restoring security fencing to the bottom of the slope and reconstructing the gravel access road on top of the levee (the "PROJECT"). The design and construction of the PROJECT will conform to the U.S. Army Corps of Engineer's levee design standards and will be reviewed and approved under the U.S. Army Corps of Engineer's Section 408 (33 U.S.C. Section 408) permit process. The PROJECT will further entail a soil import operation to stockpile and secure approximately 25,000 cubic yards of levee material that is anticipated to help reduce PROJECT costs. The PROJECT will include the transfer of right of way, up to ten (10) feet in width, from CCCSD to FCD, which will be addressed through a separate instrument. The location of the right of way to be transferred is located approximately as depicted in Exhibit B (Right of Way), attached hereto and incorporated herein. For the contemplated right of way transfer, FCD and CCCSD agree that the strip of needed additional right of way (width not to exceed 10 feet) shall be transferred at no or nominal cost.
3. Responsibilities of FCD and CCCSD:
 - A. FCD shall perform the following activities for the PROJECT:
 - i. Provide overall project management for delivery of the PROJECT.

- ii. Act as lead agency for the PROJECT, and obtain all permits, approvals, and entitlements necessary for the PROJECT, and prepare and obtain CEQA clearance for the PROJECT.
- iii. Prepare final plans, specifications and engineer's estimate ("PS&E") for the PROJECT.
- iv. Provide 35%, 65%, and 95% PS&E review sets to CCCSD for review and comment.
- v. Prepare, send out, and implement all utility relocation notices and relocation agreements (if needed).
- vi. Prepare the hydraulic analysis to set the levee height.
- vii. Assist CCCSD in presenting the PROJECT and updates to the CCCSD Board as requested by CCCSD.
- viii. Prepare and implement the project's SWPPP, in accordance with State laws and regulations.
- ix. Advertise and solicit bids for construction of the PROJECT, consult with CCCSD once bids have been opened, and award and administer the construction contract, provided that the lowest responsible bid does not exceed the engineer's estimate by more than 15%.
- x. Perform and / or contract for surveying, materials testing, and construction management and inspection of the PROJECT.
- xi. Own and maintain all PROJECT improvements on FCD property (exclusive of CCCSD security fencing).

B. CCCSD shall perform the following activities for the PROJECT:

- i. Review 35%, 65%, and 95% PS&E review sets and provide feedback within three weeks of receipt of those documents.
- ii. Secure and stockpile up to 25,000 cubic yards of clean fill needed for the PROJECT that meets the U.S. Army Corps of Engineer's levee design standards.
- iii. Approve the 100% PS&E bid documents and provide written confirmation of approval to FCD.
- iv. Transfer title for the right of way (width up to 10 feet) needed for the PROJECT to FCD.
- v. Provide temporary contractor access to facilitate loop traffic on the levee.
- vi. Review PROJECT construction bids and approve FCD's award of the PROJECT construction contract, provided that the lowest responsible bid does not exceed the engineer's estimate by more than 15%.
- vii. Own and maintain all PROJECT improvements on CCCSD property, including CCCSD security fencing regardless of location.

4. Financial Responsibility:

- A. FCD and CCCSD shall fund the costs and expenses of the PROJECT equally, including for in-kind staff costs, specialized consultant costs and direct costs, including but not limited to all of the following:
 - i. Reimbursement of FCD staff and CCCSD staff costs incurred in the estimated amounts set forth on Exhibit A (PROJECT Costs Estimates). If staff costs incurred by FCD or CCCSD or both for the PROJECT exceed the respective estimate set forth on Exhibit A by more than 15%, such excess costs shall not be included in the total costs to be divided between the parties without the review and written approval of the both FCD and CCCSD. Reimbursement of FCD staff and CCCSD staff costs shall include direct costs for salaries and benefits and full cost recovery of non-productive time and associated administrative overhead.
 - ii. The PROJECT construction cost, up to 115% of the engineer's estimate.
 - iii. The contracts for outside construction related services, such as surveying, materials testing and construction inspection at the amounts set forth in Exhibit A, provided that any costs incurred in excess of 15% above the estimate shall not be included in the total to be divided between the parties without the review and written approval of both parties.

- B. The parties shall share PROJECT costs equally based on a full accounting, subject to the limitations stated above. More detailed procedures for approval of extra work and change orders will be mutually agreed by the parties prior to award of the PROJECT construction contract, but in no event shall such extra work or change orders occur without the prior written consent of both parties.
- C. Any upgrades to infrastructure or materials beyond what exists prior to PROJECT implementation; i.e., height of security fence, shall be 100% paid for by the benefiting party.
- D. Prior to awarding any contract to consultant for professional services (including, but not limited to, design, surveying, or construction management) the awarding party shall seek the other party's concurrence regarding consultant's proposed scope / budget and schedule. Such concurrence shall not be unreasonably withheld.
- E. Prior to opening PROJECT construction bids, FCD and CCCSD shall, on a quarterly basis, exchange an accounting of PROJECT expenditures to date, and the party owed funds pursuant to such accountings and this Agreement shall invoice the other party the amount needed to balance the reported expenditures. Amounts due to one party shall be paid by the other party within 30 days of receipt of an invoice.
- F. Upon opening construction bids, FCD and CCCSD shall meet and review the lowest responsible bid. If the lowest responsible bid exceeds the engineer's estimate by more than 15%, FCD and CCCSD shall mutually decide within 30 days of bid opening whether to reduce the scope of the PROJECT, increase PROJECT funding by either or both parties, reject all bids, or terminate the PROJECT as set forth in Section 9 below.
- G. During PROJECT construction, on a monthly basis, FCD and CCCSD shall mutually share an accounting of expenditures to date and the party owed funds under this Agreement shall invoice the other party the amount needed to balance reported expenditures. Amounts due to one party shall be paid by the other party within 30 days of receipt of an invoice.
- H. The PROJECT cost estimates set forth on Exhibit A include PROJECT costs incurred by FCD and CCCSD beginning on January 1, 2015, notwithstanding the Effective Date of this Agreement, the parties agree that such costs incurred prior to the Effective Date shall be treated as PROJECT costs pursuant to the terms of this Agreement.
- I. The parties shall provide strict accountability of any and all funds and shall report to each other all receipts and disbursements related to this Agreement upon request of the other party.

5. Mutual Project Coordination:

CCCSD and FCD shall meet periodically to coordinate efforts to manage PROJECT delivery and maintain reasonable PROJECT costs. At a minimum, the parties will meet:

- A. On or about the 35%, 65% and 95% PS&E delivery dates,
- B. On or about the PROJECT construction contract advertisement date; and
- C. On or about construction bid opening to determine and confirm the mutual interest in proceeding with PROJECT.

6. Insurance and Indemnification:

A. Types and Amounts of Insurance:

- i. Design and Construction. For each contract for PROJECT-related design or construction

work, CCCSD and FCD shall require that each contractor and consultant, and its assigns, keep and maintain the following insurance policies that meet the following requirements: (1) workers' compensation insurance pursuant to state law; (2) commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum single-limit coverage of \$2,000,000 per occurrence; (3) builders' risk insurance in an amount equal to the construction contract amount, with a waiver of subrogation for CCCSD and FCD, and naming CCCSD and FCD as loss payees (applies to contractors only); (4) vehicle liability insurance with a minimum combined single-limit coverage of \$1,000,000 per occurrence; (5) professional liability (or errors and omissions) insurance, with policy limits of at least \$2,000,000 and a maximum deductible of \$25,000 (applies to design professional consultants only) and (6) certificates of insurance, copies of policies, or endorsements evidencing the above insurance coverage.

- ii. Other Contractors and Consultants. For each contract for PROJECT-related work other than design and construction work, CCCSD and FCD shall require that each contractor and consultant, and its assigns, keep and maintain the following insurance policies that meet the following requirements: (1) workers' compensation insurance coverage pursuant to state law; (2) commercial general liability policy with a combined single limit coverage of at least \$1,000,000, for all damages, including consequential damages, due to bodily injury, sickness or disease, or death of any person or damage to or destruction of any property, including loss thereof, arising from each occurrence; (3) vehicle liability insurance with a minimum combined single-limit coverage of \$1,000,000; (4) professional liability (or errors and omissions) insurance, with a policy limit of at least \$1,000,000; and (5) certificates of insurance, copies of policies, or endorsements evidencing the above insurance coverage. The policy limit for each commercial general liability policy and each professional liability policy must be approved by each party's Risk Manager, who may require the limit to exceed the above-stated minimum limits of coverage for those policies.
- iii. Contractors' Policies Primary. The commercial general liability insurance and vehicle liability insurance shall include endorsements naming CCCSD and FCD, and their governing bodies, officers, agents, and employees, as additional insureds. Each aforementioned insurance policy shall contain a provision that the insurance afforded thereby to the additional insureds shall be primary insurance to the full limits of that policy and that, if any of the additional insureds has other insurance or self-insurance against a loss covered by such policy, such insurance or self-insurance shall be excess insurance only.
- iv. Certificates of Insurance. CCCSD and FCD shall require each contractor and consultant on PROJECT, and its assigns, to promptly furnish to CCCSD and FCD certificates of insurance evidencing the coverage required herein. Additionally, CCCSD and FCD shall include in each contractor and consultant contract a requirement that, no later than five days after contractor's, consultant's, or assign's receipt of (i) a notice of cancellation or a notice of an intention to cancel any of consultant/contractor/assigns insurance coverage required by this Agreement, or (ii) a notice of a material change to consultant/contractor/assigns insurance coverage required by this Agreement, consultant, contractor, or assign will provide CCCSD and FCD a copy of such notice of cancellation, or notice of intention to cancel, or notice of material change. CCCSD or FCD's failure to include such a requirement in each contract with a consultant or contractor will constitute a default under this Agreement. CCCSD and FCD shall further include in all consultant and contractor contracts a requirement that, if the consultant or contractor, or its assigns, renews any of the insurance policies, or acquires any new insurance policy, or amends the coverage through an endorsement to any policy, at any

time during the term of the contract, then the consultant or contractor, or its assigns, shall provide a current certificate of insurance to CCCSD and FCD.

- B. Indemnification: CCCSD and FCD shall ensure that all PROJECT-related design and construction contracts include provisions requiring the contractor, subcontractors, consultants, and subconsultants to provide indemnity, warranties, and bonds in the amounts and manner set forth below, unless otherwise approved by both CCCSD and FCD in writing:
- i. Indemnity. CCCSD and FCD shall require each Contractor and subcontractor, and their agents and assigns, to defend, indemnify, and hold harmless FCD and CCCSD, and their governing bodies, officers, agents, and employees, from and against any and all liability, claims, actions, causes of action, or demands whatsoever against any of them, including related attorneys' fees, arising out of or connected with any injury or death of any person or damage to the property or other liability of any nature arising out of or in any way connected with the PROJECT. Except as provided by Civil Code section 2782 et seq., the contractor's and subcontractors' obligations under this section shall exist regardless of the existence or degree of fault of FCD or CCCSD or any indemnitee.
 - ii. Warranties. In addition to all warranties existing at law, CCCSD and FCD shall require the PROJECT construction contractor to provide an express warranty for the benefit of FCD and CCCSD, for a one-year time period (hereinafter "Contractor's Warranty"), containing, at a minimum, the contractor's guarantee that the work has been performed in accordance with the plans and specifications, and the Contractor's agreement to repair or replace all work that fails to conform to the plan and specifications or proves to be defective in workmanship or materials during the stated time period.
 - iii. Bonds. FCD's contract with the PROJECT construction contractor shall require the contractor to present two good and sufficient surety bonds, one for payment, and one for performance, each in an amount equal to 100 percent of the contract price, issued by a surety admitted in the State of California in a form satisfactory to FCD and CCCSD, naming FCD and CCCSD as obligees on the bonds.
- C. FCD shall cause the contract documents for the PROJECT to include provisions requiring the contractor and subcontractors to pay prevailing wages for the PROJECT work, as required by state law.
- D. Neither CCCSD, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by FCD in connection with any of FCD's obligations under this Agreement, and to the extent not covered by the insurance or indemnification described in this section 6, FCD shall defend, indemnify, save and hold harmless CCCSD, its officers and employees against any damage or liability occurring by reason of anything done or omitted to be done by FCD in connection with any of FCD's obligations under this Agreement.

Neither FCD, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CCCSD in connection with any of CCCSD's obligations under this Agreement, and to the extent not covered by the insurance or indemnification described in this section 6, CCCSD shall defend, indemnify, save and hold harmless FCD, its officers and employees against any damage or liability occurring by reason of anything done or omitted to be done by CCCSD in connection with any of CCCSD's obligations under this Agreement.

- E. Nothing in this Agreement is intended to affect the legal liability of either party to third parties by imposing any standard of care different from that normally imposed by law.

7. Project Acceptance and Maintenance:
 - A. Upon completion of the PROJECT, FCD and CCCSD shall jointly conduct the final inspection. After CCCSD and FCD have determined that the PROJECT work performed has been completed to CCCSD's and FCD's satisfaction, FCD shall accept the PROJECT improvements as complete and shall promptly record a notice of completion. FCD shall not accept the PROJECT nor record a notice of completion unless CCCSD has confirmed in writing that the PROJECT was completed to CCCSD's satisfaction. In the event FCD and CCCSD disagree regarding the completion of the PROJECT, the parties shall meet to discuss the concerns and agree upon the necessary corrective action.
 - B. Following acceptance, FCD shall own and be responsible for maintaining all improvements relating to the PROJECT located on FCD property, subject to the provision of the Contractor's Warranty, described in Section 6(B)(ii), above, and shall defend, indemnify, save, and hold harmless CCCSD, its governing bodies, officers, agents, and employees against all claims, demands, damages, costs, expenses, or liability arising after acceptance, whether relating to design, construction, use, operation, or maintenance of the PROJECT improvements, except for any claims, demands, damages, costs, expense or liability arising after acceptance relating to the design, construction, use, operation, or maintenance of the PROJECT improvements to the extent they are the result of the negligence or willful misconduct of CCCSD.
8. Agreement Modification: This Agreement is subject to modification only with the written consent of the legislative bodies of both parties. Neither party shall unreasonably withhold its consent to modification for the implementation and accomplishment of the overall purpose for which this Agreement is made.
9. Term; Termination: This Agreement is effective as of the Effective Date and shall terminate upon acceptance of the PROJECT improvements as set forth in Section 7(A), unless earlier terminated as provided herein. This Agreement may be terminated immediately by mutual, written consent of the parties. This Agreement may also be terminated unilaterally by either party upon review of the construction bids if the lowest responsible bid exceeds the engineer's estimate by more than 15% or if the Engineer's final Cost Estimate materially exceeds the Engineer's preliminary Cost Estimate shown on Exhibit A. In such a case, as a condition of termination, each party shall promptly report their PROJECT costs incurred up to the date of the decision to terminate, and balance expenditures as described in Section 4 above. However, the obligations contained in Sections 3.A.xi, 3.B.vii, and 6 shall survive any termination of this Agreement. Further, the obligations contained in Section 4, shall survive any termination of this Agreement, whether or not the PROJECT is completed. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared pursuant to a contract between a consultant or contractor and FCD in connection with this Agreement and the PROJECT are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for FCD, and as and between FCD and CCCSD, the parties agree that FCD owns all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. If any of the works made for hire is subject to copyright protection, FCD reserves the right to copyright such works and CCCSD agrees not to copyright such works.
10. Assignment: The rights, duties, and responsibilities under this Agreement may not be assigned by either party.
11. Notices: All notices given under this Agreement shall be served by enclosing the notice in a sealed envelope addressed to the other party, certified mail, postage prepaid, addressed as follows:

To FCD: Chief Engineer
Flood Control District/Central San District Agreement

Contra Costa County Flood Control and Water Conservation District
255 Glacier Drive
Martinez, CA 94553

To CCCSD: CCCSD General Manager
5019 Imhoff Place
Martinez, CA 94553

Either party may designate, by written notice to the other, a different agent for service or address for notice. Notice is effective two (2) business days from the date of mailing.

12. Entire Agreement: This Agreement contains the entire understanding of CCCSD and FCD relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto are executing this Agreement as of the Effective Date.

CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

CENTRAL CONTRA COSTA SANITARY DISTRICT

By: _____
Chief Engineer

By: _____
CCCSD General Manager

ATTEST:
CLERK OF THE BOARD

ATTEST:
CCCSD SECRETARY OF THE DISTRICT

By: _____
Deputy

By: _____
Secretary of the District Clerk

RECOMMENDED BY DEPARTMENT:

By: _____

APPROVED BY COUNTY ADMINISTRATOR

By: _____

FORM APPROVED:
Sharon L. Anderson, County Counsel

FORM APPROVED:
Kenton L Alm, District Counsel

By: _____
Deputy County Counsel

By: _____

Exhibit A

Grayson and Walnut Creeks Levee Improvement at CCCSD Treatment Plant

Project Cost Estimate

November 2020

Task/Subtask	Description	CCFC&WCD	CCCSD	Totals
1	Preliminary Design and Risk and Uncertainty Analysis Task	\$ 94,332	\$ -	\$ 94,332
1.1	Preliminary Design Subtask	\$ 40,528	\$ -	\$ 40,528
1.2	Risk and Uncertainty Analysis Subtask	\$ 53,804	\$ -	\$ 53,804
2	Environmental Permitting and Compliance Task	\$ 149,920	\$ -	\$ 149,920
2.1	CEQA/NEPA Subtask	\$ 92,960	\$ -	\$ 92,960
2.2	Permits Subtask	\$ 56,960	\$ -	\$ 56,960
3	Real Property Acquisition Task	\$ 63,920	\$ -	\$ 63,920
4	Section 408 USACE Project Permitting	\$ 89,312	\$ -	\$ 89,312
5	Design Task	\$ 390,680	\$ -	\$ 390,680
5.1	Preliminary Scoping and Data Gathering Subtask	\$ 107,056	\$ -	\$ 107,056
5.2	Detailed Surveys Subtask	\$ 107,180	\$ -	\$ 107,180
5.3	35% Plans and Estimate Subtask	\$ 51,152	\$ -	\$ 51,152
5.4	65% Plans, Specifications and Estimate Subtask	\$ 46,596	\$ -	\$ 46,596
5.5	95% Plans, Specifications and Estimate Subtask	\$ 40,144	\$ -	\$ 40,144
5.6	100% Plans, Specifications and Estimate Subtask	\$ 38,552	\$ -	\$ 38,552
6	Construction Engineering Task	\$ 2,057,087	\$ -	\$ 2,057,087
6.1	Advertise Subtask	\$ 8,281	\$ -	\$ 8,281
6.2	Award Subtask	\$ 7,790	\$ -	\$ 7,790
6.3	Notice To Proceed Subtask	\$ 2,860	\$ -	\$ 2,860
6.4	Pre-Construction Subtask	\$ 4,480	\$ -	\$ 4,480
6.5	Construction Support	\$ 181,510	\$ -	\$ 181,510
6.6	Construction & Contingency	\$ 1,738,000	\$ -	\$ 1,738,000
6.7	Performance Testing and Demobilization Subtask	\$ 114,166	\$ -	\$ 114,166
7	Reporting Task	\$ 15,974	\$ -	\$ 15,974
8	Project Management Task	\$ 77,392	\$ -	\$ 77,392
Total Project Cost (Rounded)		\$ 2,939,000	\$ -	\$ 2,939,000



Legend

 Location of ROW Transfer (Approx.)

 Parcels

**Grayson and Walnut Creeks
Levee Improvement
at CCCSD Treatment Plant**