

C-14

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

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

RECITALS

- A. American Rivers is a non-profit corporation headquartered in the District of Columbia whose purpose is the restoration of rivers and critical wildlife habitat.
- B. District, created by the Contra Costa County Flood Control and Water Conservation District Act (West's Wat. Code Appen., § 63-1 et seq.) ("**the Act**"), is the owner of portions of Marsh Creek, a watercourse that runs 30 miles from the eastern slope of Mt. Diablo to the San Joaquin Delta, including the portions of Marsh Creek referenced herein.
- C. District has legal authority to enter into this Agreement under Section 5(b) of the Act. (West's Wat. Code Appen., § 63-5.)
- D. On or about August 16, 2016, District, American Rivers and the Department of Water Resources of the State of California ("**DWR**") entered into Grant Agreement No. 4600011176 ("**DWR Grant Agreement**"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. In the DWR Grant Agreement, DWR agreed to provide a grant in an amount not to exceed \$744,404 to fund a portion of an estimated \$2,738,954 in costs associated with the "**Three Creeks Restoration Project**" (hereafter "**Project**"). American Rivers is the sponsor of the Project, and District is the co-sponsor. American Rivers and District are collectively referred to in the DWR Grant Agreement as the "Grantee." A copy of the DWR Grant Agreement is attached hereto as Exhibit A and incorporated herein by this for reference.
- E. In addition to the funding to be provided under the DWR Grant Agreement, American Rivers has secured \$1,969,550 in funding from other public agencies and private sources (collectively "**Other Granting Agencies**") to apply toward costs of the Project. Under the DWR Grant Agreement, the remaining \$25,000 is to be funded by District.

- F. The Project generally involves the planning, design, environmental review and compliance, excavation, and planting of a segment of the Marsh Creek channel in the Brentwood area, along with associated project and construction management activities, community involvement, monitoring and maintenance. The channel segment in question begins at the Union Pacific Railroad crossing over Marsh Creek and ends at the Marsh Creek confluence with Sand Creek, and will be referred to as the “**Lower Reach.**”
- G. As set forth in the DWR Grant Agreement, construction within the Lower Reach would involve the removal of approximately 12,000 cubic yards of earth along 1,400 linear feet of the east bank of the creek, creating approximately just over one acre of new floodplain surfaces in widths varying from 20 feet to 40 feet. Excavation of the floodplains will include the removal of soil down to approximately 10 feet below the existing elevation and grading the creek bank to create a flatter 3:1 slope between the upland and newly created floodplain areas.
- H. Following completion of the civil/earth work described in Recital G, the new floodplains and east bank of the channel within the Lower Reach would be densely planted with native vegetation to create just over an acre of riparian habitat. Riparian trees that include valley oak, sycamore, live oak, blue oak, box elder, buckeye, cottonwood and willow would be planted along the banks. Slopes and banks would be planted with grassland and scrub species, including creeping wild rye, California brome, purple needlegrass, dense-flowered lupine, mugwort, common fiddleneck, elegant clarkia and California poppy. Floodplain areas would be planted with seasonal wetland species, including creek clover, Baltic rush and deer sedge.
- I. Following completion of the landscaping work described in Recital H, the new vegetation within the Lower Reach would be monitored and maintained for three years in accordance with a plan to be developed and agreed upon by the Parties.
- J. The purpose of this Agreement is to set forth the respective obligations of the Parties under the DWR Grant Agreement, which would become effective upon District’s approval of the Project.

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

AGREEMENT

1. Term. This Agreement becomes effective on the Effective Date and continues in full force and effect until terminated in accordance with Section 18.
2. Condition Precedent. Party obligations set forth in this Agreement take effect only upon District’s approval of the Project.

3. American Rivers Project Obligations.

a. American Rivers will be solely responsible to DWR for ensuring compliance with, and shall comply with, all obligations of the Parties, either individually or collectively as the Grantee, that are set forth in the DWR Grant Agreement, including without limitation all tasks described in the Work Plan attached to the DWR Grant Agreement as Exhibit A, except for the obligations of District set forth in Section 4 and Section 13.b. of this Agreement, and the obligations of District set forth in the Operations and Maintenance Manual and Monitoring Plan described in Section 16.a.(1) of this Agreement.

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

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

5. Design.

a. Plans and specifications.

(1) **Preparation.** American Rivers will prepare two sets of final (100 percent) plans, specifications and cost estimates for the Project. One set of plans, specifications and cost estimates will pertain to the work described in Recital G, and will be referred to as the **“Civil Set.”** The second set of plans, specifications and cost estimates will pertain to the work described in Recital H, and will be referred to as the **“Landscaping Set.”** Plans and specifications must conform to industry standards and be consistent with this Agreement, the current Contra Costa County Public Works Department Standard Plans, the Caltrans Standard Plans (2015), and the State of California Standard Specifications (2015).

(2) **District Review and Approval.** American Rivers will submit the Civil Set and Landscape Set to District for review, and obtain District’s approval of the Civil Set and Landscape Set prior to the selection of any contractors to perform any work on the Project. The District’s Assistant Chief Engineer (**“District’s Representative”**) is authorized to approve the Civil Set and Landscape Set on behalf of the District. If, in the course of review, District’s Representative identifies a deficiency in either the Civil Set or the Landscaping Set, District’s Representative will notify American Rivers of the deficiency, and American Rivers will work with District’s Representative and American Rivers’ design professionals to rectify the deficiency to the satisfaction of District’s Representative. The plans and specifications contained in the approved Civil Set will be referred to as the **“Civil Plans.”** The approved plans and specifications contained in the approved Landscaping Set will be referred to as the **“Landscaping Plans.”** The improvements set forth in the Civil Plans will be referred to as the **“Civil/Earth Work.”** The improvements set forth in the Landscaping Plans will be referred to as the **“Landscaping Work.”** The Civil/Earth Work and Landscaping Work may be referred to collectively as the **“Project Work.”**

b. Changes.

(1) After Civil Plans have been approved by District, field orders or change orders that affect costs, or the original design upon which the Civil Plans are based, or the intent of the original design, require the advance written approval of District's Representative after consultation with American Rivers.

(2) After Landscaping Plans have been approved by District, field orders or change orders that affect costs, or the original design upon which the Landscaping Plans are based, or the intent of the original design, require the advance written approval of District's Representative after consultation with American Rivers.

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

6. Construction Bids; Contractors; Contracts.

a. American Rivers will comply with any and all applicable bidding and other legal requirements in the selection of contractors to perform any Project Work.

b. American Rivers will obtain District's prior written approval of the selection of contractors to perform Civil/Earth Work, and all contracts for the performance of Civil/Earth Work. American Rivers will obtain District's prior written approval of the selection of contractors to perform Landscaping Work, and all contracts for the performance of Landscaping Work. District's Representative is authorized to approve American Rivers' contractor selections on behalf of District.

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

d. District will be named as a third party beneficiary in all contracts for construction of Project Work.

7. Prevailing Wages. In all of its contracts for construction of any Project Work, American Rivers will include the following provision:

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

8. Improvement Security.

a. In all of its contracts for any Civil/Earth Work, American Rivers will include a provision that requires the contractor(s) to provide the following security to District prior to the contractor's commencement of the Civil/Earth Work.

(1) Performance and Guarantee: Security in an amount equal to 100 percent of the contractor's estimated cost of construction of the Civil/Earth Work. Such security shall consist of a corporate surety bond, in a form acceptable to District, issued by a surety admitted in California and naming District as co-obligee on the bond. With this security, the contractor will guarantee performance of the Civil/Earth Work under its contract with American Rivers, and acceptance against any defective materials or any unsatisfactory performance.

(2) Payment: Security in an amount equal to 100 percent the contractor's estimated cost of construction of the Civil/Earth Work. Such security shall consist of a corporate surety bond, in a form acceptable to District, issued by a surety admitted in California and naming District as co-obligee on the bond. With this security, the contractor will guarantee payment to subcontractors and to persons renting equipment or furnishing labor or materials to them or to the contractor.

b. In its contract(s) for construction of the Landscaping Work, American Rivers will require the contractor(s) to provide the following security to District prior to the commencement of the Landscaping Work:

(1) Performance and Guarantee: Security in an amount equal to 100 percent of the contractor's estimated cost of construction of the Landscaping Work. Such security shall consist of a corporate surety bond, in a form acceptable to District, issued by a surety admitted in California and naming District as co-obligee on the bond. With this security, the contractor will guarantee performance of the Landscaping Work under its contract with American Rivers, under this Agreement and acceptance against any defective materials or any unsatisfactory performance.

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

9. Insurance.

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

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

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

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

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

b. In addition, American Rivers will:

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

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

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

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

10. Indemnification.

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

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

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

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

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

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

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

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

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

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

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

b. Indemnification by American Rivers.

(1) To the extent not covered by the defense and indemnification provided by its contractor(s), American Rivers will defend, indemnify, save, and hold harmless District and County and their officers, agents, and employees the same as required of the contractor(s) as

described in Subsection 10.a., except that American Rivers' obligations shall also include any act or omission (negligent or non-negligent) attributable to American Rivers or its officers, agents or employees.

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

c. Indemnification by District.

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

11. Permits. American Rivers will be responsible for obtaining all permits and approvals from any and all permitting authorities, including District and County, necessary to complete the Project. American Rivers will strictly comply with the terms and conditions of an encroachment permit to be issued by District prior to the start of construction, and shall include a provision in all construction contracts requiring the contractor(s) to strictly comply with that and all other permits and approvals.

12. Improvements.

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

b. Landscaping Work. After the issuance of all permits, certifications and approvals required for the Landscaping Work, American Rivers, by and through its contractor(s), will complete the Landscaping Work in accordance with the Landscaping Plans, and will complete the Landscaping Work in a good and workmanlike manner, in accordance with accepted construction practices, the County Standard Plans and the Caltrans Standard Specifications (2015). Where there is a conflict between any of the foregoing, the stricter requirements shall govern.

c. Guarantee and Warranty.

(1) Civil/Earth Work. American Rivers guarantees that the Civil/Earth Work by its contractor(s) will be free from defects in materials or workmanship and perform satisfactorily for a period of one year from after District accepts the Civil/Earth Work as complete. District's acceptance will not be unreasonably withheld. District's Representative is

authorized to accept the Civil/Earth Work on behalf of District. In the event that District determines that corrections, repairs or replacements are necessary, District will so notify American Rivers no later than 45 days following American Rivers' request for acceptance of the Civil/Earth Work. American Rivers, by and through its contractor(s), agrees to promptly correct, repair, or replace, at its sole expense, any defects in the Civil/Earth Work.

(2) **Landscaping Work.** American Rivers guarantees that the Landscaping Work by its contractor(s) will be free from defects in materials or workmanship and perform satisfactorily for a period of one year from after District accepts the Landscaping Work as complete. District's acceptance will not be unreasonably withheld. District's Representative is authorized to accept the Landscaping Work on behalf of District. In the event that District determines that corrections, repairs or replacements are necessary, District will so notify American Rivers no later than 45 days following American Rivers' request for acceptance of the Landscaping Work. American Rivers, by and through its contractor(s), agrees to promptly correct, repair, or replace, at its sole expense, any defects in the Landscaping Work.

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

13. **Costs.**

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

b. **District's Responsibility.** District is responsible for a \$25,000 share of the environmental review costs associated with the Project, in accordance with the DWR Grant Agreement. American Rivers is responsible for the remaining share of the environmental review costs.

c. **Other Project Costs.** The Parties have incurred costs related to the Project that are not described in Section 13.a. or Section 13.b. ("**Other Project Costs**"), including, but not necessary limited to, the costs of coordination between District and American Rivers through such activities as the preparation and review of correspondence, participation in telephone calls, attendance at meetings and site visits. Responsibility for Other Project Costs has not been determined as of the Effective Date. The Parties agree that, no later than 30 days following the date of execution by American Rivers of a contract for Civil/Earth Work, the Parties shall meet

and present proposals regarding the responsibility for Other Project Costs, and work cooperatively toward a binding agreement that assigns such responsibility.

14. Reimbursements to District. Project Costs incurred by District in its environmental review of the Project that exceed \$25,000 are reimbursable to District (“**Reimbursable Costs**”). Within 90 days of the Effective Date, American Rivers will provide District with an invoice format and identify all cost details that American Rivers deems to be necessary to substantiate its requests to DWR and Other Granting Agencies for funding disbursements to pay Project Costs. District may submit to American an invoice for Reimbursable Costs that conforms to the invoice format provided by American Rivers and includes the required cost details (“**Conforming Invoice**”). Within 30 days of receipt of funding from DWR or Other Granting Agencies to pay the Reimbursable Costs set forth in a Conforming Invoice, or within 60 days of receipt of the Conforming Invoice, whichever is earlier, American Rivers will remit payment in full to District. Notwithstanding the foregoing, if American Rivers disputes a charge contained in a District invoice, the Parties agree to work together cooperatively to resolve the dispute and, if necessary, utilize alternative dispute resolution processes before seeking judicial intervention.

15. Completion Deadline. American Rivers shall complete the Project Work in accordance with the approved schedule under the DWR Grant Agreement, as may be amended from time to time. If American Rivers fails to timely complete the Project Work, the Parties will confer regarding the delay and work cooperatively to establish a new schedule. In the event that the Parties do not agree on a new schedule, District may proceed to complete the Project Work, and in that event, American Rivers shall pay all costs of completing the Project Work.

16. Monitoring and Maintenance.

a. Written Plan.

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

- (a) Monitoring Component
 - (i) Documentation of Project Area
 - (ii) Development of vegetation monitoring plan
 - (iii) Monitoring of topographic changes on floodplain channel
 - (iv) Ten-year vegetation and geomorphic monitoring plan
 - (v) Training of volunteers
 - (vi) Routine monitoring requirements
 - (vii) Party responsibilities
- (b) Maintenance Component
 - (i) Minimum maintenance during three-year establishment
 - (ii) Retention of contractor to maintain and replace vegetation during three-year establishment and warranty period

- (iii) Terms of a \$150,000 long-term maintenance endowment
- (iv) Party responsibilities

b. Monitoring. The Parties will comply with their respective monitoring obligations under the approved Plan.

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

(1) Commencing with District's acceptance of the Landscape Work, American Rivers will provide three years of Project planting maintenance, including the limitation of invasive weeds and replacement of unsuccessful plantings with the same or similar species. District will assume all maintenance obligations following successful completion of the three-year period.

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

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

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

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

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

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

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

20. Waiver. No waiver of any provision of this Agreement will be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement will be

deemed, or constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

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

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

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

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

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

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

AMERICAN RIVERS, INC.

By: _____
Brian M. Balbas
Chief Engineer

By: _____
W. Robert Irvin
President

Attachment:
Exhibit A

By: _____
Jennifer L. Marshall
Assistant Secretary

deemed, or constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

21. Assignment. This Agreement may not be assigned, assumed, pledged, or hypothecated without the advance, written consent of the other Party. Any attempt to circumvent this requirement shall be void and unenforceable.
22. No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the Parties any rights or remedies thereunder and no person or entity other than the Parties shall have standing to enforce this Agreement.
23. Entire Agreement. This Agreement, together with the DWR Grant Agreement, contains the entire understanding of the Parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties. Any alleged promise or representation by either Party shall be unenforceable unless it is set forth in this Agreement or in another written agreement or permit signed by the Parties.
24. Counterparts. This Agreement may be executed in counterparts and so executed shall constitute an Agreement which shall be binding upon all Parties hereto. A photocopy of the fully executed Agreement shall have the same force and effect as the original.
25. Signatures. By affixing his/her signature below, each of the persons signing this Agreement warrants and represents that he/she has read and understands this Agreement, that in signing on behalf of a Party he/she has full and complete authority from that Party to bind said Party to perform and comply with each and every term, obligation, condition and covenant set forth in this Agreement, and that the Party on behalf of whom he/she signs agrees to be bound by its terms.

CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

By: _____
Brian M. Balbas
Chief Engineer

Attachment:
Exhibit A

AMERICAN RIVERS, INC.

By: 
W. Robert Irvin
President

By: 
Jennifer L. Marshall
Assistant Secretary

EXHIBIT A

**GRANT AGREEMENT BETWEEN THE STATE OF CALIFORNIA THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES AND
AMERICAN RIVERS AND CONTRA COSTA FLOOD CONTROL & WATER CONSERVATION DISTRICT 4600011176
FOR A GRANT UNDER THE URBAN STREAMS RESTORATION PROGRAM
CALIFORNIA WATER CODE §7048**

THIS AGREEMENT is entered into by and among the Department of Water Resources (DWR) of the State of California, herein referred to as the "State," the Project Sponsor, American Rivers, Inc. ("American Rivers"), and Project Co-sponsor Contra Costa County Flood Control & Water Conservation District ("District"). The Project Sponsor and Co-sponsor will be collectively referred to as "Grantee" throughout this Grant Agreement. The State and Grantee do hereby agree as follows:

1. **PURPOSE.** The purpose of this Grant Agreement is to provide Urban Stream Restoration Program (USRP) grant funds pursuant to California Water Code (CWC) Section 7048 and implementing regulations and as provided for by the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000 (Proposition 13) for planning and implementation of a project affecting an Urban Stream which will reduce flooding and erosion damage, protect or restore natural ecological values of streams, and promote community involvement, education, or stewardship on Marsh Creek in Contra Costa County.
2. **TERM OF GRANT AGREEMENT.** The term of this Grant Agreement begins on the date this Grant Agreement is executed by State, and terminates on June 30, 2018, or when all of the Parties' obligations under this Grant Agreement are fully satisfied, whichever occurs earlier. The execution date is the date the State signs this Grant Agreement indicated on page 9.
3. **TOTAL PROJECT COST.** The reasonable cost of the project described in Exhibit A ("Project") is estimated to be \$2,738,954.
4. **GRANT AMOUNT.** The amount payable by State under this Grant Agreement shall not exceed \$744,404. Subject to the availability of funds, State shall provide a grant to Grantee to assist in financing the Project.
5. **GRANTEE COST SHARE.** No cost share is required for USRP grants. If Project costs exceed grant amount, the Grantee agrees to fund the difference between the estimated Total Project Cost in its grant application and the Grant Amount specified in Paragraph 4.
6. **GRANTEE RESPONSIBILITY.** Subject to the conditions precedent to performance set forth in Exhibit A, Grantee shall faithfully and expeditiously perform or cause to be performed the Project in accordance with Exhibits A through F, attached hereto and incorporated herein by this reference, and comply with all of the terms and conditions of this Grant Agreement, CWC Section 7048, Chapter 2.4 of Title 23 of the California Code of Regulations and all other applicable provisions of the CWC and California Public Resources Code. Any planning and design assistance provided to Grantees by DWR is provided pursuant to CWC Section 7048.
7. **BASIC CONDITIONS.** State shall have no obligation to disburse money for the Project under this Grant Agreement unless and until Grantee has satisfied the following conditions.
 - a) An urban water supplier that receives grant funds governed by this Grant Agreement shall maintain compliance with the Urban Water Management Planning Act (CWC§10610 et. seq.)
 - b) For the term of this Grant Agreement, Grantee submits timely Quarterly Progress Reports as required by Paragraph 18, "Submission of Reports."
 - c) Grantee submits deliverables as specified in Paragraph 21 of this Grant Agreement and in Exhibit A.
 - d) Prior to the commencement of construction or implementation activities, Grantee shall submit the following to the State:
 - i. When applicable, final plans and specifications certified by a California Registered Civil Engineer as to compliance for each approved project as listed in Exhibit A of this Grant Agreement.

- ii. A monitoring and maintenance plan as required by Paragraph 21, "Project Monitoring and Maintenance Plan Requirements."
- e) Work that is subject to CEQA and/or environmental permitting shall not proceed under this Grant Agreement until the following actions are performed:
 - i. Grantee submits all applicable environmental permits as indicated on the Environmental Information Form to the State,
 - ii. Documents that satisfy the CEQA process are received by the State,
 - iii. State has completed its CEQA compliance review as a Responsible Agency, and
 - iv. Grantee receives written concurrence from the State of Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal.

State's concurrence with Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the Project or to require changes, alterations or other mitigation. The parties acknowledge that any changes or alterations to the Project required by State may necessitate amendments to this Agreement. Grantee must demonstrate compliance with all applicable provisions of CEQA, including any tribal consultation requirements. Grantee must also demonstrate that it has complied with any and all applicable requirements of the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation.

8. BUDGET LINE ITEM FLEXIBILITY.

- a) Line Item Adjustment(s). Subject to the prior review and approval of the State's Project Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to twenty percent (20%) of the Grant Amount, including any amendment(s) thereto. A line item adjustment in excess of twenty percent (20%) or the cumulative total of line item adjustments that exceed \$200,000 shall require a formal Agreement amendment. If the Line Item Budget includes an amount for Personnel Services, that amount is based on the hours, classifications, and rates submitted by the Grantee in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the State's Program Manager.
- b) Procedure to Request an Adjustment. Grantee may submit a request for an adjustment in writing to the State's Program Manager at the address set forth in this Grant Agreement for State's Project Manager. Such adjustment may not increase or decrease the total Grant Amount. The Grantee shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. The State may also propose adjustments to the budget.

9. DISBURSEMENT OF GRANT FUNDS. Following the review of each invoice, State will disburse to Grantee the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Grant Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. For each project, funds will be disbursed by State in response to each approved invoice in accordance with Exhibit C. Any and all money disbursed to Grantee under this Grant Agreement and any and all interest earned by Grantee on such money shall be used solely to pay Eligible Project Costs.

10. ELIGIBLE PROJECT COST. Grantee shall apply State funds received to eligible project costs only, in accordance with applicable provisions of the law, and Exhibit C (Budget). Eligible project costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of

environmental documentation, environmental mitigations, monitoring, and project construction. Work performed on the Project after May 22, 2015 (the "Award Date"), shall be eligible for reimbursement. Reasonable administrative expenses may be included as Project Costs and will depend on the complexity of the project preparation, planning, coordination, construction, acquisitions, implementation, and maintenance. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the project including an appropriate pro-rata allocation of overhead and administrative expenses that are regularly assigned to all such projects in accordance with the standard accounting practices of the Grantee.

Advanced funds will not be provided, unless as provided for in property right acquisition, explained in Paragraph 11. Costs that are not eligible for reimbursement include but are not limited to:

- a) Costs, other than those noted above, incurred prior to the Award Date of the Grant.
- b) Purchase of equipment not an integral part of a project.
- c) Establishing a reserve fund.
- d) Purchase of water supply.
- e) Replacement of existing funding sources for ongoing programs.
- f) Support of existing agency requirements and mandates (e.g. punitive regulatory agency requirements).
- g) Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to the effective date of the grant award with the State.
- h) Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this Grant Agreement, the State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise eligible costs.
- i) Overhead not directly related to project costs.
- j) Regular operation and maintenance costs.

11. PROPERTY RIGHTS ACQUISITIONS. Grantee may acquire real property rights for the purpose of the protection, restoration, and enhancement of urban stream channels. Whenever any real property fee title or interest is to be acquired with grant funds, the following shall apply:
- a) State will not make payments for property rights acquisitions in excess of fair market value; additionally the state will not participate in any transactions in excess of fair market value.
 - b) Acquisitions will be backed by 1) an appraisal supporting the purchasing price, and 2) written concurrence from DWR or the State of California Department of General Services (DGS), attesting to the appraisal's compliance with applicable DGS standards and requirements. For low value property interests, State, in its sole discretion, may waive any of the foregoing submittal requirements.
 - c) Grantee shall submit a preliminary title report, vesting documents, and a fully conformed appraisal report to State pursuant to the Appraisal Report Provisions. The report shall be prepared and signed by a qualified general appraiser, who is licensed by the California Department of Real Estate Appraisers and demonstrates compliance with the Uniform Standards for Professional Appraisal Practices.
 - d) The property rights shall be acquired from a willing seller and in compliance with current laws governing acquisition of properties by public agencies.
 - e) Grantee shall provide sufficient notice to adjacent landowners and other members of the public to enable public input on interests that may be affected by the acquisition and changes in land use.
 - f) Grantee shall use, manage, and maintain the property in a manner consistent with the purpose of the acquisition, for at least 20 years. Grantee further assumes all management and maintenance costs associated with the acquisition, including the costs of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. State shall not be liable for any cost of such management or maintenance.
 - g) Grantee shall identify all riparian rights that will be affected by a real property acquisition and propose appropriate treatment of such rights.

- h) Fee title shall generally be acquired by the local agency Sponsor. However, if the Co-sponsor has non-profit 501(c)(3) status, it may acquire fee title. In the latter case, fee title shall be transferred within 180 days after completion of the on-site work to the local agency Sponsor, which hereby agrees to accept such transfer.
- i) An Irrevocable Offer to dedicate real property interest for public use that is less than a fee title, such as an easement or license, shall be recorded concurrently with the instrument that conveys the real property interest to the Project Sponsor or Co-sponsor.
- j) Grantee shall complete an Example Land Acquisition Cost Schedule, which includes budget items relevant to the acquisition.
- k) Method of payment. Funds provided by State for real property acquisitions shall be deposited by State with an escrow holder acceptable to State and with escrow instructions regarding funding and disbursement provided by State. If the escrow does not close by the date set forth in State's escrow instructions, or such other date as may be agreed to by the parties, the funds shall be returned to State.
- l) Grantee shall supply a copy of any recorded vesting documents to State after close of escrow.

12. METHOD OF PAYMENT. After the disbursement requirements in Paragraph 7 "Basic Conditions" are met, State will disburse the whole or portions of the Grant commitment to Grantee at the address set forth in Paragraph 28, following receipt from Grantee of an invoice for costs incurred, and timely Quarterly Progress Reports as required by Paragraph 18, "Submission of Reports." Invoices submitted by Grantee shall include the following information:

- a) Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.
- b) Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for the Project during the period identified in the particular invoice for the construction, operation, or maintenance of a project. For real property acquisition components of projects, see Paragraph 11, Property Rights Acquisitions.
- c) Appropriate receipts and reports for all costs incurred.
- d) Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - i. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - ii. Invoices must be itemized based on the categories specified in Exhibit C. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - iii. One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
 - iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the State's grant amount, and those costs that represent Grantee's costs.
 - v. Original signature and date (in ink) of Grantee's Project Manager.
- e) Payment will be made no more frequent than monthly, in arrears, upon receipt of an invoice bearing the Grant Agreement number. Submit the original "wet signature" copy of the invoice form to the following address:
Environmental Program Manager
Integrated Regional Water Management (IRWM)
Urban Streams Restoration Program
901 P Street, Room 411A
Sacramento, California 95814
- f) State reserves the right to retain a maximum of five percent (5%) of the funds requested by the Grantee's reimbursement until State's receipt of the Final Report as required by Paragraph 18 and Exhibit E or as otherwise authorized by the State.

- g) State may reject an invoice if:
 - a. It is submitted without signature
 - b. It is submitted under signature of a person other than Grantee's duly authorized representative
 - c. Grantee fails to timely submit a final invoice within the time period specified in Paragraph 2. State will notify Grantee of any costs so rejected, and the reasons therefore. State may withhold up to 100 percent of payment for a specific statement of cost if the progress of the Project is not satisfactory. An invoice containing a mathematical error will be corrected by State, after notification to Grantee, and will thereafter be treated as if submitted in the corrected amount. State will provide Grantee with notification of the corrected invoice.
- h) State will notify Grantee, whenever, upon review of an invoice, State determines that any portion or portions of the costs claimed:
 - i. Are ineligible to be paid under Federal or State law, or the terms of this Grant Agreement
 - ii. Do not constitute Eligible Project Costs approved by State for funding under the terms of this Grant agreement
 - iii. Are not supported by invoices or receipts acceptable to State. Grantee may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Grantee fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending invoice by the amount of the ineligible and/or unapproved cost(s).

13. WITHHOLDING OF GRANT DISBURSEMENT BY STATE. If State determines that the Project is not being implemented in accordance with the provisions of this Grant Agreement, or that Grantee has failed in any other respect to comply with the provisions of this Grant Agreement, and if Grantee does not remedy any such failure to State's satisfaction, State may withhold from Grantee all or any portion of the Grant Amount and take any other action that it deems necessary to protect its interests. Where a portion of the grant has been disbursed to the Grantee and State notifies Grantee of its decision not to release funds that have been withheld pursuant to Paragraph 9, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Grantee, as directed by State. State may consider Grantee's refusal to repay the requested disbursed grant amount a contract breach subject to the default provisions in Paragraph 14, "Default Provisions." If State notifies Grantee of its decision to withhold the entire funding amount from Grantee pursuant to this paragraph, this Grant agreement shall terminate upon receipt of such notice by Grantee and the State shall no longer be required to provide funds under this Grant Agreement and the Grant Agreement shall no longer be binding on either party.

14. DEFAULT PROVISIONS. Grantee will be in default under this Grant Agreement if any of the following occurs:
- a) Breach of this Grant Agreement, or any supplement or amendment to it, or any other agreement between Grant Recipient and State evidencing or securing Grant Recipient's obligations.
 - b) Making any false warranty, representation, or statement with respect to this Grant Agreement.
 - c) Failure to operate or maintain project in accordance with this Grant Agreement.
 - d) Failure to make any remittance required by this Grant Agreement.

Should an event of default occur, State may do any or all of the following:

- a) Declare the Grant be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
- b) Terminate any obligation to make future payments to Grantee.
- c) Terminate the Grant Agreement.
- d) Take any other action that it deems necessary to protect its interests.

15. PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Grantee shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Grant Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project.

Grantee shall be responsible for observing and complying with any applicable federal, state and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement, and safety laws, rules, regulations, and ordinances. Grantee shall provide copies of permits and approvals to the State prior to commencement of implementation activities.

16. RELATIONSHIP OF PARTIES. Grantee is solely responsible for design, construction, and operation and maintenance of the Project. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of grant funds by State and shall not be deemed to relieve or restrict responsibilities of Grantee under this Grant Agreement.
17. GRANTEE REPRESENTATIONS. Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Grantee in the application, documents, amendments, and communications filed in support of its request for Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000 financing.
18. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Grant Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread and corrected for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager, and shall be submitted in both electronic and hard copy forms. If requested, Grantee shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit E. The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Final Report is a requirement for the release of any funds retained for such project.
 - a) Quarterly Progress Reports: Grantee shall submit Quarterly Progress Reports to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Grantees activities, milestones achieved, work planned for the next quarter, any accomplishments, and any problems encountered in the performance of the work under this Grant Agreement during the reporting period. The first Quarterly Progress Report should be submitted to the State no later than September 30, 2016, with future reports then due on successive three-month increments based on the invoicing schedule and this date.
 - b) Final Reports: Upon completion of the Project, Grantee shall provide a final written report in a format as directed by the State in Exhibit E, that includes (but is not limited to) the following:
 - i. A description of conditions before the Project was commenced.
 - ii. A summary of the restoration and planning work and techniques used.
 - iii. A description of the results of the Project.
 - iv. An analysis of the techniques used, and a description of planned long-term monitoring.
 - v. Photographs of progress and utilization of restoration techniques and activities.
 - vi. Photographs of community participation in planning or implementation activities (i.e. design charettes, community meetings, site tours, volunteer workers) if part of the Project.
 - vii. Photographs on-site before, during and after implementation to document Project conditions. Specific geographic positions through maps and/or GPS readings of where the photos were taken (photo-points), so images can be produced from the same vantage point in subsequent years to document long-term vegetation growth, channel formation, and geomorphic response to bankfull and flood flows.
19. PROJECT PERFORMANCE AND ASSURANCES. Grantee agrees to faithfully and expeditiously perform or cause to be performed all Project work described in Exhibit A under this Grant Agreement and implement the Project in accordance with applicable provisions of the law. Grantee and its representatives shall fulfill its obligations under the Grant Agreement, and shall be responsible for the performance of the Project. In

the event State finds it necessary to enforce this provision of this Grant Agreement in the manner provided by law, Grantee agrees to pay all costs incurred by State.

20. LABOR COMPLIANCE. The Grantee will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including, but not limited to, Section 1720 et seq. of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4) and payment of prevailing wages for work done and funded pursuant to this Agreement, including any payments to the Department of Industrial Relations under California Labor Code Section 1771.3.
21. PROJECT MONITORING AND MAINTENANCE PLAN REQUIREMENTS. Grantee agrees to use, manage, and maintain the property acquired, developed, rehabilitated or restored with the grant funds provided in this Grant Agreement consistent with the purposes of the program. A monitoring and maintenance plan shall be submitted to the State prior to disbursement of grant funds for construction or monitoring activities listed in this Grant Agreement. Monitoring and maintenance plans should include the following information: baseline conditions, a brief discussion of monitoring techniques to be used, frequency of actions and adaptive management, and the location of monitoring points and maintenance activities.
- Grantee or their successors may, with the written approval of State, transfer this responsibility to use, manage, and maintain the property.
22. STATEWIDE MONITORING REQUIREMENTS. Grantee shall ensure that all groundwater projects and projects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76 (commencing with Section 10780) of Division 6 of CWC) and, where applicable, that projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by the State Water Resources Control Board.
23. NOTIFICATION OF STATE. Grantee shall promptly notify State, in writing, of the following items:
- a) Events or proposed changes that could affect the Work Plan, Budget, Schedule, or work performed under this Grant Agreement. Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the wording/scope of work, schedule or term, and budget.
 - b) Any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide the opportunity for attendance and participation by State's representatives. Grantee shall make such notification at least fourteen (14) calendar days prior to the event.
 - c) Completion of work. Grantee shall notice the State of the Final inspection of the Project and provide State the opportunity to participate in the inspection. Grantee shall make such notification at least fourteen (14) calendar days prior to the final inspection.
24. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Grant Agreement shall be in writing. Notices may be transmitted by any of the following means:
- a) By delivery in person.
 - b) By certified U.S. mail, return receipt requested, postage prepaid.
 - c) By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.
 - d) By electronic means.
 - e) Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing.

Notices shall be sent to all of the addresses below. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

Department of Water Resources
Arthur Hinojosa
Chief, Division of IRWM
P.O. Box 942836
Sacramento CA 94236-0001

Contra Costa County Flood Control &
Water Conservation District
Julia R. Bueren
Chief Engineer
255 Glacier Drive
Martinez, CA 94553

American Rivers, Inc.
Kristin May
Chief Financial Officer
1101 14th Street, NW Suite 1400
Washington, DC 20005

25. PERFORMANCE EVALUATION. Upon completion of this Grant Agreement, Grantee's performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Grantee.
26. AMENDMENTS. The provisions of this Grant Agreement may be amended only by a written agreement between State and Grantee.
27. SURVIVAL. Any provision of this Grant Agreement that imposes an obligation after the termination or expiration of this Agreement shall survive the termination or expiration of this Grant Agreement.
28. PROJECT REPRESENTATIVES. The Project Representative for the State during the term of this Grant Agreement will be:
Department of Water Resources
Arthur Hinojosa
Chief, Division of IRWM
P.O. Box 942836
Sacramento CA 94236-0001
Phone: (916) 653-4736

Disbursements by the State under Paragraph 12 of this Grant Agreement will be sent to:

American Rivers, Inc.
Kristin May
Chief Financial Officer
1101 14th Street, NW Suite 1400
Washington, DC 20005
Phone: (202) 347-7550
e-mail: kmay@americanrivers.org

Direct all inquiries to the Project Manager;

The Project Manager for the State is:

Department of Water Resources, IRWM
Kevin Marr, Environmental Scientist

Mailing Address:

901 P Street, Room 411A

Sacramento, CA 95814

Phone: (916) 651-9621

e-mail: kevin.marr@water.ca.gov

The Project Manager for the Grantee is:

American Rivers, Inc.

John Cain, Director of Conservation, CA Flood Management

Mailing Address:

120 Union Street

Nevada City, CA 95959

Phone: (510) 809-8010

e-mail: jcain@americanrivers.org

The State may change its Project Representative, and either party may change its Project Manager, upon written notice to the other parties.

29. STANDARD PROVISIONS. The following Exhibits are attached and made a part of this Grant Agreement by this reference:

Exhibit A – Work Plan

Exhibit B – Schedule

Exhibit C – Budget

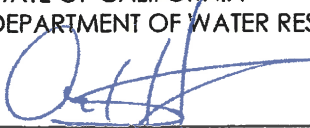
Exhibit D – Standard Conditions

Exhibit E – Report Formats and Requirements

Exhibit F – State Audit Document Requirements

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement.

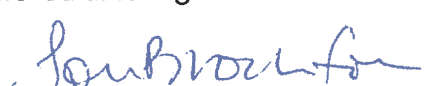
STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES



Arthur Hinojosa, P.E., Chief
Division of Integrated Regional Water
Management

Date 8-17-16

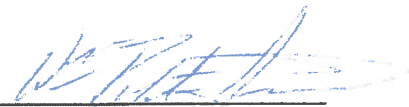
Approved as to Legal Form and Sufficiency



Robin Brewer, Assistant Chief Counsel
Office of Chief Counsel

Date 8-16-16

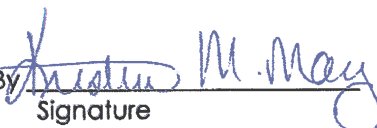
SPONSOR: AMERICAN RIVERS, INC.

By 

Signature

W. Robert Irvin
President

Date 7/18/16

By 

Signature

Kristin M. May
Chief Financial Officer

Date 7/21/16

Address: 1101 14th Street, NW Suite 1400
Washington, DC 20005

CO-SPONSOR: CONTRA COSTA COUNTY
FLOOD CONTROL & WATER
CONSERVATION DISTRICT

By 

Signature

Julia R. Bueren
Chief Engineer

Date 7/12/16

Address: 255 Glacier Drive
Martinez, CA 94553

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**EXHIBIT A
WORK PLAN**

AMERICAN RIVERS

Three Creeks Restoration Project

Project Goals and Objectives

The objective of this Project is three-fold: 1) to restore and enhance the ecological viability of the riparian ecosystem along Marsh Creek, 2) to improve flood protection, and 3) to promote public awareness and local stewardship of Marsh Creek. The Project involves excavating a new floodplain and expanding the channel along 1,400 linear feet of Marsh Creek in Brentwood, CA to create enough room for both improved flood protection and establishment of three acres of riparian vegetation. The Project will also engage local residents through active stewardship (including volunteer opportunities and site visits) and by enhancing recreational opportunities along the creek.

Project Administration

Conditions: Notwithstanding any provision in the Grant Agreement to the contrary, the obligations of Grantee under the Grant Agreement are conditioned upon (1) completion by the Contra Costa County Flood Control & Water Conservation District (District) of an environmental review of the Project and all other required Project-related actions and proceedings under the California Environmental Quality Act (CEQA); and (2) District's approval of the Project. The parties acknowledge that District has discretion to approve, modify or disapprove the Project, and that modifications of the Project by District may necessitate amendments to the Grant Agreement, including this Work Plan. District's approval of the Project may include the approval and execution of an agreement between District and American Rivers, Inc. (American Rivers) that sets forth their respective roles and responsibilities under this Grant Agreement.

American Rivers shall serve as the lead administrative and budgeting contact with the CA Department of Water Resources (DWR) for the Project under this Grant Agreement. American Rivers shall serve as DWR's sole contact for invoicing and payment purposes under Section 12 of the Grant Agreement.

Project Background

Marsh Creek is currently a perennial stream that extends 30 miles from the eastern slope of Mount Diablo to the San Joaquin Delta. Marsh Creek is currently a trapezoidal flood control channel with steep (2:1 slope) earthen banks, a partially armored (rip rap) bottom, and non-native, weedy vegetation. The creek was channelized by the Soil Conservation Service in the early 1960s to provide flood protection and erosion control for an agricultural landscape, but recent urbanization has increased both flood peaks and the need for improved flood protection. New residents and changing values have also changed expectations about how Marsh Creek should look and function. For over fifty years the District has prevented the establishment of any riparian vegetation in accordance with the original project operations and maintenance manual to maintain the flood control functions of the channel. Today, hundreds of residents walk along Marsh Creek daily and desire a more natural creek that is capable of supporting a diversity of native plant and animal species.

The Project is a unique opportunity to excavate a new floodplain and expand the channel along 1,400 linear feet of creek between Sand Creek and the Union Pacific Railroad crossing to create enough room for both improved flood protection and establishment of riparian vegetation. American Rivers and the District are working together with the Friends of Marsh Creek Watershed, the City of Brentwood, and an adjacent developer to integrate the Project into linear parks and a subdivision planned for adjacent parcels. The Project and adjacent parks will transform this easily accessible area near downtown Brentwood into a natural destination spot for the community members of Brentwood, Oakley and the surrounding region. It will become a place where community members will travel to discover and enjoy the natural beauty of Marsh Creek, where they can stop and enjoy the shade, and look for river otters and spawning salmon.

Project Description

The Project to be funded under Grant Agreement No. 4600011176 includes the planning, design, environmental review, and construction, of the widening and planting of a section of the Marsh Creek channel located in Brentwood, Contra Costa County. The Project also includes project management activities, community involvement and post-construction monitoring and maintenance. A detailed list of Project tasks to be completed is set forth below.

The northern (downstream) Project limit is the Union Pacific Railroad and the southern (upstream) Project limit is the confluence with the District's Sand Creek Flood Control Channel. The Project site lies along the western boundary of the Palmilla Subdivision located on Walnut Boulevard (Assessor Parcel Nos. 017-170-007 and 017-170-008).

During the design phase, construction plans and specifications will be developed and prepared for bidding. Biological, cultural and geotechnical studies will also need to be conducted by consultants or obtained from other agencies, and an environmental review by the District that complies with the California Environmental Quality Act will need to be completed. Regulatory permits will also need to be obtained. Overall project management and administration will be required to coordinate these phases of the Project as well as the construction phase of the Project.

Construction will involve the removal of approximately 12,000 cubic yards of earth along 1,400 linear feet of the east bank of Marsh Creek in varying widths -- from 20 to 40 feet -- creating just over an acre of new floodplain. Excavation for the floodplain will include removing soil down to approximately 10 feet below the existing elevation and grading the creek bank to create a flatter 3:1 slope (vs. the existing 2:1 slope) between the upland and the newly created floodplain. After excavation and grading work, the new floodplain and east bank of Marsh Creek will be densely planted with native riparian and upland grasses, forbes, shrubs, and trees, creating just over an acre of riparian habitat.

After construction, the Project will include three years of monitoring and maintenance of the new vegetation.

Tasks and Deliverables

Task 1: Project Management and Administration

American Rivers will take the lead in fiscal management and reporting, developing and managing subcontracts, convening Project team meetings, developing and disseminating Project information, and coordinating with DWR. American Rivers will also report on Project performance.

Deliverables

- Quarterly and final task and financial reports
- Contracts for any subcontracted work related to design, monitoring, cost estimating, and bid package development
- Quarterly invoices
- Quarterly project partner meetings

Task 2: Planning, Design, Permitting, and CEQA

Planning – American Rivers will obtain a survey of the creek and will retain Restoration Design Group (RDG) to design the Project. RDG will be required to create schematic (35-50% complete) and final (100% complete) designs based on conceptual Project designs prepared by RDG. RDG will also conduct hydraulic modeling, produce a hydraulic report to assess channel capacity and calculate manning's n, and finalize a planting plan for the Project site.

Permitting – A consultant will be retained to prepare resource agency permit applications in consultation with the District. Permits will be obtained from the District, CA Department of Fish & Wildlife, U.S. Army Corps of Engineers, the Central Valley Regional Water Quality Control Board, and others as required.

CEQA Compliance – The District will serve as the lead agency under CEQA. A consultant will be retained to develop CEQA documents in consultation with the District. Consultants will also be retained to conduct or obtain biological, cultural, and geotechnical studies.

Deliverables:

- Detailed site survey
- Hydraulic modeling and report
- Project design
 - Schematic (35-50% complete)
 - Final design (100% complete)
- Planting plan
- Surveys (biological, geotechnical, cultural)s)
- CEQA review documents
- Permit applications (1600, 401, 404, encroachment permit, grading permit)s)
- Permits (1600, 401, 404, encroachment permit, grading permit)

Task 3: Implementation/Construction

Contractors will be retained to clear and grade the Project site and plant three acres of native riparian plantings. Approximately 12,000 cubic yards along 1,400 linear feet of the east bank of Marsh Creek will be excavated to create a new 20- to 40-foot wide floodplain surface along the east bank. Borrow material will be removed and deposited on another parcel under a separate agreement. Both sides of the channel will be hydro-seeded to create a dense ground cover of native grasses and forbs combined with a relative open canopy of native riparian shrubs and trees.

Deliverables:

- Bid package(s)
- Contracts with contractors
- Grading of Project site (excavation and fine grading)
- Final Inspections; Certification of Registered Civil Engineer
- Planting of Project site with native vegetation according to the planting plan
- install signs

Task 4: Monitoring and Maintenance

Monitoring – The Project site will be documented before, during and after construction. A consultant will be retained to develop a vegetation monitoring plan to measure success and replace any defective plant material. Topographic changes on the floodplain channel will be monitored. Volunteers will be taught how to conduct basic vegetation and geomorphic monitoring, identify invasive weeds, and organize an invasive control plan as necessary. The District will conduct routine monitoring in compliance with the maintenance plan described below.

Maintenance – A long-term maintenance plan will be developed in consultation with District. A landscape maintenance contractor will be retained to provide three years of vegetation maintenance to limit invasive weeds and replace unsuccessful plant material. A long-term maintenance endowment will be established. District will provide a baseline level of maintenance of the channel. Guidelines for both maintenance and monitoring will be compiled into one comprehensive Operation and Maintenance Manual and Monitoring Plan.

Deliverables:

- Operation and Maintenance Manual and Monitoring Plan
- Draft agreement(s) regarding management and maintenance of the site and adjacent park lands for consideration of other parties that use or manage the project site or adjacent lands.
- Contract with landscape maintenance contractor.
- Maintenance and monitoring training
- Maintenance endowment
- Two vegetation planting and maintenance events at Project site
- Three annual monitoring and maintenance reports

Task 5: Community Outreach and Involvement

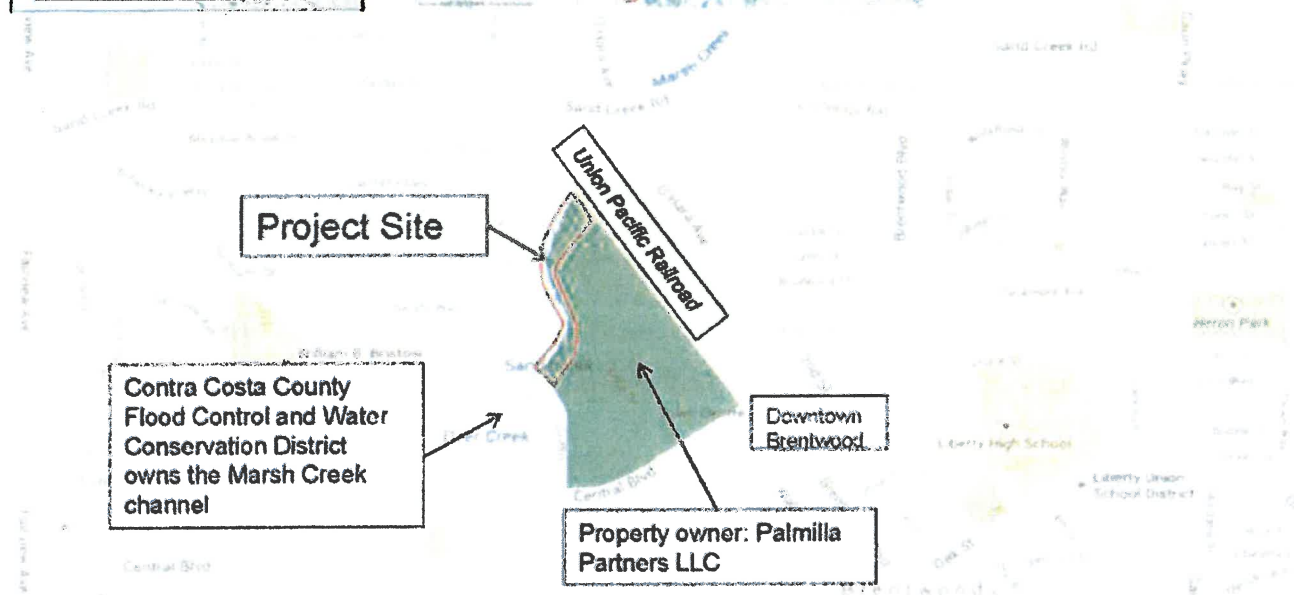
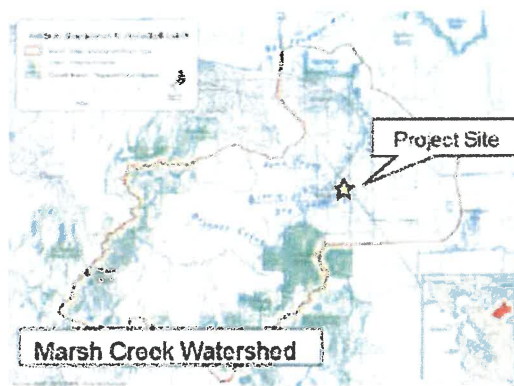
Local community members will be given an opportunity to participate in the planning, implementation, maintenance and monitoring of the project site. Signs will be installed to interpret the Project for the public and acknowledge DWR's role.

Deliverables:

- Design presentation at two meetings of Friends of Marsh Creek Watershed (FOMCW)
- Six updates in FOMCW monthly newsletter
- One community site walk
- Two newspaper articles in local and regional newspapers, two interpretive signs acknowledging DWR and state bond funds

Project Location: 719 Monte Verde Lane, Brentwood, CA 94513 (GPS: 37.942294, -121.707694; [Google Maps](#))

Marsh Creek and San Francisco Bay Region



Location Map for Three Creeks Parkway

EXHIBIT B
SCHEDULE

AMERICAN RIVERS

Three Creeks Restoration Project

The schedule below presents target dates for the completion of the tasks identified in Exhibit A.

	2016				2017				2018			
	2 nd Qtr	3 rd Qtr	4 th Qtr	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr	
Task 1: Project Administration												
Quarterly written and financial reports		D	D	D	D	D	D	D	D	D		
Final Report										D		
Subcontracts		D	D	D	D	D	D			D		
Timely invoices		D	D	D	D	D	D	D	D	D		
Team Meetings	D	D	D	D	D	D	D	D	D	D		
Task 2: Planning, Design, Permitting, and CEQA												
Site Survey	D											
Hydraulic Modeling Report		D										
Refine Conceptual Design	D											
50 percent design			D									
Final design (100 percent)					D							
Planting plan			D									
Surveys (biological, geotechnical, cultural)			D									
Complete environmental review document				D								
Permit applications					D							
Task 3: Implementation/Construction												
Bid Package				D								
Complete construction contracts					D							

**EXHIBIT C
BUDGET**

Three Creeks Restoration Project Budget Final: 10/06/15				
Project Tasks	Total Project Costs	USRP Grant Funds	Local Funds	Other Funds*
Task 1. Project Management & Administration	\$40,749	\$14,749	\$0	\$26,000
Task 2. Design, CEQA, Permitting, Bidding	\$243,965	\$106,965	\$25,000	\$112,000
Task 3. Implementation**	\$2,211,921	\$559,371	\$0	\$1,652,550
Task 4. Monitoring and Maintenance	\$217,229	\$52,229	\$0	\$165,000
Task 5. Community Involvement	\$25,090	\$11,090	\$0	\$14,000
Total Project Costs	\$2,738,954	\$744,404	\$25,000	\$1,969,550

*Other funding sources include the Bechtel Foundation, The Restoration Agreement Funds, NFWF, EPA, Developer obligations; local funds are from the Contra Costa County Flood Control & Water Conservation District.

**The Project award was reduced by an amount of \$82,713 from the application request

EXHIBIT D

STANDARD CONDITIONS

D.1 ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) **SEPARATE ACCOUNTING OF GRANT DISBURSEMENT AND INTEREST RECORDS:** Grantee shall account for the money disbursed pursuant to this Grant Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- b) **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Grant Agreement.
- c) **REMITTANCE OF UNEXPENDED FUNDS:** Grantee, within a period of sixty (60) calendar days from the final disbursement from State to Grantee of grant funds, shall remit to State any unexpended funds that were disbursed to Grantee under this Grant Agreement and were not needed to pay Eligible Project Costs.

D.2 ACKNOWLEDGEMENT OF CREDIT: Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Grant Agreement. During construction of the Project, Grantee shall install a sign at a prominent location which shall include a statement that the Project is financed under the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000, administered by State of California, Department of Water Resources. Grantee shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

D.3 AMENDMENT: No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Grant Agreement is binding on any of the parties

D.4 AMERICANS WITH DISABILITIES ACT: By signing this Grant Agreement, Grantee assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

D.5 AUDITS: State reserves the right to conduct an audit at any time between the execution of this Grant Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Grantee to conduct a final audit, at Grantee's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may take any action it deems necessary to protect its interests.

Pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit of State for a period of three years after final payment under this Grant Agreement with respect of all matters connected with this Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of Grantee or subcontractors shall be preserved for this purpose for at least three (3) years after Project completion. See Exhibit F for a listing of documents/records that State Auditors would need to review in the event of a grant being audited.

D.6 BUDGET CONTINGENCY/LIMIT ON STATE FUNDS

If the Budget Act of the current year covered under this Grant Agreement does not appropriate sufficient funds for the Urban Streams Restoration Program, this Grant Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Grant Agreement. In this event, State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Grant Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement. Nothing in this Grant Agreement shall be construed to provide Grantee with a right of priority for payment over any other Grantee. If funding for any fiscal year after the current year covered by this Grant Agreement is reduced or deleted by the Budget Act for purposes of this program, State shall have the option to either cancel this Grant Agreement with no liability occurring to State, or offer a Grant Agreement amendment to Grantee to reflect the reduced amount.

D.7 CHILD SUPPORT COMPLIANCE ACT: For any Grant Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code Section 7110, that:

- a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

D.8 COMPETITIVE BIDDING AND PROCUREMENTS: Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Grant Agreement.**D.9 COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Grant Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.**D.10 CONFLICT OF INTEREST**

- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) **Former State Employee:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

D.11 DISPOSITION OF EQUIPMENT: Grantee shall provide to State, not less than 30 days prior to submission of the final project invoice, a final inventory list of equipment purchased with grant funds provided by State. Grantee shall consult with State on the scope of the inventory not less than 60 days prior to the submission of the final project invoice. The inventory shall include all items with a current estimated fair market value of more than \$5,000 per item. Within 60 days of receipt of such inventory, State shall provide Grantee with a list of the items on the inventory that State will take title to. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items that it takes title to. Cost of transportation, if any, shall be borne by State.**D.12 DISPUTES:** In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided may result in return of the

invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. Any claim that Grantee may have regarding the performance of this Grant Agreement including, but not limited to claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty (30) calendar days of Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Grant Agreement to implement the terms of any such resolution.

D.13 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this Grant Agreement, Grantee, certifies and will cause its contractors under this Grant Agreement to certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(b) to inform employees, contractors, or subcontractors about all of the following:
 1. The dangers of drug abuse in the workplace,
 2. Grantee's policy of maintaining a drug-free workplace,
 3. Any available counseling, rehabilitation, and employee assistance programs, and
 4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide as required by Government Code Section 8355(c), that every employee, contractor, and/or subcontractor who works under this Grant Agreement:
 1. Will receive a copy of Grantee's drug-free policy statement, and
 2. Will agree to abide by terms of Grantee's condition of employment, contract or subcontract.

D.14 FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of a construction project and as determined by State, Grantee shall provide for a final inspection and certification by a California Registered Civil Engineer that the project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Grant Agreement and to the State's satisfaction.

D.15 GOVERNING LAW: This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

D.16 INCOME RESTRICTIONS: The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Grant Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Grant Agreement.

D.17 INDEPENDENT CAPACITY: Grantee, and the agents and employees of Grantee, if any, in the performance of the Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

D.18 INSPECTIONS: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Grant Agreement. This right shall extend to any local project sponsor, subagreements, and Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Grant Agreement with State. Grantee acknowledges that records related to the Project may be subject to disclosure under the Public Records Act (California Government Code Section 6250 et. seq.) unless an exemption applies. State shall have the right to inspect the Grantee's office at any and all reasonable times after completion of the project to ensure compliance with the terms and conditions of this Grant Agreement. During regular office hours, State shall have the right to inspect

and to make copies of any books, records, or reports of the Grantee relating to this Grant Agreement. Grantee shall maintain and shall make available at all times for such inspection accurate records of its costs, disbursements, and receipts with respect to its activities under this Grant Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.

- D.19 NONDISCRIMINATION:** During the performance of this Grant Agreement, Grantee and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full. 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. Grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Grant Agreement.
- D.20 NO THIRD PARTY RIGHTS:** The parties to this Grant Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
- D.21 PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project without prior permission of State. Grantee shall not take any action concerning the performance of this Grant Agreement, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Grantee to meet its obligations under this Grant Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired through this Grant Agreement be remitted to State.
- D.22 REMEDIES, COSTS, AND ATTORNEY FEES:** The Grantee agrees that any remedy provided in this Grant Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State as a result of breach of this Grant Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Grant Agreement by the State shall not preclude the State from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Grant Agreement, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.
- D.23 RETENTION:** Notwithstanding any other provision of this Grant Agreement, State shall, for each project, withhold five percent (5.0%) of the funds requested by Grantee for reimbursement of Eligible Costs until the project is completed and Grantee has met requirements of Paragraph 18, "Submissions of Reports." Grantee may submit a request to the State to exempt the Grantee from the retention requirement, or request payment of retention at the close of specific tasks shown in Exhibit A. Waiving the Grantees retention requirement is at the sole discretion of the State.
- D.24 RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Grant Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Grant Agreement, subject to appropriate acknowledgement of credit to the State for financial support. The

Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

D.25 SEVERABILITY OF UNENFORCEABLE PROVISION: If any provision of this Grant Agreement is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Grant Agreement shall be construed to remain fully valid, enforceable, and binding on the parties.

D.26 STATE REVIEWS AND INDEMNIFICATION: The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State is for administrative purposes only and does not relieve the Grantee of the responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agree to indemnify, defend and hold harmless the State and the State against any loss or liability arising out of any claim or action brought against the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with:

- a) The Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof;
- b) Performing any of the terms contained in this Grant Agreement or any related document;
- c) Any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and CWC Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or
- d) Any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Grant Agreement. Grantee agrees to pay and discharge any judgment or award entered or made against the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of the Grant Agreement.

D.27 SUCCESSORS AND ASSIGNS: This Grant Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Grant Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

D.28 TERMINATION, IMMEDIATE REPAYMENT, INTEREST: This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Grant Agreement within a reasonable time as established by the State. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the State an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.

D.29 UNENFORCEABLE PROVISION: In the event that any provision of this Grant Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Grant Agreement have force and effect and shall not be affected thereby.

D.30 WAIVER OF RIGHTS: None of the provisions of this Grant Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Grant Agreement unless contrary to law. Any waiver by either party of rights

arising in connection with the Grant Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

D.31 WITHHOLDING OF GRANT DISBURSEMENTS: The State may withhold all or any portion of the grant funds provided for by this Grant Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Grant Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT E
REPORT FORMAT AND REQUIREMENTS

These reporting outlines should be followed. Submitting reports in an alternative format requires State approval.

QUARTERLY PROGRESS REPORT

Grantee shall submit Quarterly Progress Reports on a consistent basis to meet the State's requirement for disbursement of funds. The quarterly progress report should describe the work performed during the reporting period. For each project, describe the work performed including:

PROJECT INFORMATION (INCLUDE ANY OF THE BELOW THAT WERE APPLICABLE DURING THE REPORTING PERIOD)

- Legal matters.
- Engineering matters.
- Environmental matters.
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies.
- Major accomplishments during the quarter (i.e. tasks completed, milestones met, meetings held or attended, press releases, etc).
- Discussion of data submittal effort(s) for the previous quarter, including a description of the data submitted and date(s) of submittal.
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter.
- Description of any differences between the work performed and the work outlined in the project work plans.

COST INFORMATION

- Provide a Table showing all costs incurred during the quarter by the Grantee, and each contractor working on the project. The Table should include all costs as they relate to the Work Plan tasks.
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Work Plan.
- A revised budget, including an explanation of why the revisions were necessary, by task, if changed from latest budget shown in Exhibit C, Budget. Note, a revised budget may require an official amendment to the Agreement before it is accepted as final.

SCHEDULE INFORMATION

- A schedule showing actual progress verse planned progress as shown in Exhibit B.
- A discussion on how the actual schedule is progressing in comparison to the schedule in Exhibit B.
- A revised schedule, by task, if changed from latest schedule in Exhibit B. Note, a revised schedule may require an official amendment to the Agreement before it is accepted as final.

ANTICIPATED ACTIVITIES NEXT QUARTER

- Provide a description of anticipated activities for the next quarterly reporting period.

FINAL REPORT

A Final Report is required for the project identified in the Work Plan, Exhibit A. This report will include the following Sections:

EXECUTIVE SUMMARY

The Executive Summary consists of a maximum of ten (10) pages summarizing project information (see report status section below for topics). The Executive Summary should include the following:

- Brief description of work proposed to be done in the original USRP Grant application.
- Description of actual work completed and any deviations from the work plan identified in the Grant Agreement. List any official amendments to the Agreement, with a short description of the amendment

METHODS/ANALYSIS/CONSTRUCTION/RESULTS

- A description of conditions before the project was executed.
- An analysis of the techniques used, and a description of planned long-term monitoring.
- If applicable, describe the findings of any study and whether the study determined the engineering, hydrologic, hydrogeologic, environmental, economic and financial feasibility of the project.
- A description of the results of the project.
- Photographs of restoration techniques and activities; and community participation (i.e. design charettes, community meetings, site tours, volunteer workers) if part of the project.
- Photographs during and after construction to document project conditions. Include specific geographic positions through mapped photo points and/or GPS readings, so images can be produced from the same vantage point in subsequent years to document long-term vegetation growth, channel formation, and geomorphic response to bankfull and flood flows.

REPORTS AND/OR PRODUCTS

- Provide a copy of any final technical report or study, produced for this project.
- Provide a copy of the final Monitoring and Maintenance Plan for this project.
- Provide a map and shapefile(s) showing the location of the completed project. A description of the geographic projection and datum used for the shapefile must be submitted with the shapefile; (e.g. NAD '83 datum and either a UTM 10 or UTM 11 projection, dependent on the project's location).
- Provide an electronic copy of any as-built plans (media: DVD-ROM; PDF format).
- For projects involving a modeling component, Grantee shall provide the major input data files, parameters, calibration statistics, and output files.
- Provide copies of any data collected along with location maps.

COST & DISPOSITION OF FUNDS INFORMATION

- A summary Table of invoices showing:
 - The date each invoice was submitted to State.
 - The amount of the invoice.
 - The date the check was received.
 - The amount of the check (If a check has not been received for the final invoice, then state so).
- A spreadsheet summary of the original budget costs by task versus the final project costs

ADDITIONAL INFORMATION

- A final project schedule showing actual progress verse planned progress.
- Certification from a California Registered Civil Engineer that the project was conducted in accordance with the approved Work Plan and any approved modifications thereto.
- Submittal schedule for Monitoring Reports to be undertaken beyond the grant period and an outline of the proposed reporting format.

ELECTRONIC REPORT FORMATTING

Grantee agrees that work funded under this Grant Agreement will be provided in an electronic format to State. Electronic submittal of final reports, plans, studies, data, and other work performed under this grant shall be as follows:

- Text preferably in MS WORD or text PDF format.
- Files generally less than 10 MB in size.
- Files named so that the public can determine their content.

EXHIBIT F**STATE AUDIT DOCUMENT REQUIREMENTS**

The following provides a list of documents typically required by State Auditors and general guidelines for Grantee. List of documents pertains to both Grant, and Grantee's Cost Share, and details the documents/records that State Auditors would need to review in the event of this Grant Agreement is audited. Grantee should ensure that such records are maintained for each funded project.

List of Documents for AuditInternal Controls:

1. Organization chart (e.g., Agency's overall organization chart and organization chart for this Grant Agreement's funded projects.
2. Written internal procedures and flowcharts for the following:
 - a. Receipts, deposits and disbursements
 - b. State reimbursement requests
 - c. Grant expenditure tracking
 - d. Guidelines, policy, and procedures on grant funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on grant funded Program/Project.

Agreements and Contracts:

1. Original signed Grant Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants received from the State.
3. A listing of all other funding sources for the project.
4. All subcontractor and consultant contracts and related or partners documents, if applicable.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under this Grant Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related budget line items under this Grant Agreement.
3. Reimbursement requests submitted to the State for this Grant Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under this Grant Agreement.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for grant reimbursement.

Administration Costs: Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on this grant funded project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to this Grant Agreement.

Project Files:

1. All supporting documentation maintained in the project files.
2. All correspondence related to this Grant Agreement.