

**COOPERATIVE AGREEMENT
ESTUDILLO CANAL IMPROVEMENTS
BETWEEN MONARCH BAY DRIVE BRIDGE AND UNION PACIFIC RAILROAD,
IN SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA, ZONE NO. 2 PROJECT**

This Cooperative Agreement (Agreement) is made this 7th day of April, 2020 in the City of Oakland, State of California, by and between the City of San Leandro, hereinafter referred to as "City" and the Alameda County Flood Control and Water Conservation District, hereinafter referred to as "District." City and District hereby agree as follows:

A. Background

1. The Estudillo Canal in Flood Control Zone 2 (also known as Line A) between the San Francisco Bay and Union Pacific Railroad (UPRR) Crossing is an open earthen channel that bisects the Monarch Bay Golf Course and flows from east to west to the Bay.
2. The District has an existing flood control drainage easement between the San Francisco Bay and UPRR, and owns the remaining portion of the Estudillo Canal upstream of UPRR. The District maintains the entire Estudillo Canal including the portion of open earthen channel that bisects the Monarch Bay Golf Course downstream of UPRR.
3. The District conducted a Joint Feasibility Study with the U.S. Army Corps of Engineers for the entire reach of Estudillo Canal between San Francisco Bay and Coelho Drive upstream, and determined that the existing channel does not have sufficient capacity to convey the 100-year design flow (1% annual chance of occurring) design flow.
4. The City owns and maintains the sediment handling basins (referred to as the Dredge Materials Management Site) downstream of UPRR, on the south side of Estudillo Canal.
5. The City owns and maintains an existing drainage structure (identified as Tide Gates #40 and #42 and part of the marshlands' tide gate hydrological system) at the south channel levee just downstream of UPRR, connecting the Roberts Landing Mitigation Marshes and Estudillo Canal. The structure consists of two 36" pipes with flap gates on the channel inboard side and sluice gates on the channel outboard side allowing tidal flow from the south to enter into Estudillo Canal.
6. The City owns and maintains Monarch Bay Drive Bridge at the mouth of Estudillo Canal by San Francisco Bay. The south bridge abutment embankment protection is eroding due to daily tidal flows. The City desires to include the construction of the bridge abutment embankment repairs in the District's upcoming Estudillo Canal improvement project.
7. The District and the City are working together on the flood control improvements for the portion of Estudillo Canal between Monarch Bay Drive Bridge and UPRR, hereinafter referred to as the "Project." Exhibit A depicts the Project setting and components. This Agreement sets forth the responsibilities of both the District and the City for the implementation of the Project.

C-2020-34

B. General Scope of Project

1. To address the channel capacity deficiency downstream of UPRR, the District conducted a hydraulic study on the effect of temporarily diverting high flow in the channel to the adjacent City-owned sediment handling basin. The temporarily diverted high flow would then drain back into the Estudillo Canal within approximately 48 hours. The study concluded that temporary diversion of high flow into the City basin is feasible and would help lower the 100-year water surface elevation in the channel downstream of UPRR.
2. The District plans to reconstruct the existing deteriorating tide gate structure approximately 465 feet upstream of the Monarch Bay Drive Bridge. The reconstructed tide gate structure would also be adaptable to future sea level rise.
3. The District plans to lower approximately 305 linear feet of the Estudillo Canal south levee approximately 500-feet downstream of UPRR. Articulated concrete block mat will be installed on the south side of the lowered levee to protect the embankment from erosion and scouring. A new drainage structure with three thirty-six-inch (36") diameter culverts equipped with duck bills and slide gates will be constructed to allow high flow temporarily stored in the City basin to drain back into Estudillo Canal.

The levee lowering and the installation of the new District drainage structure are independent and will not affect City's maintenance and operation of the existing City basin drainage structures.

The District desires an easement for the section of the articulated concrete block mat slope protection that will encroach on the channel outboard side in the City owned basin. Exhibit B shows the boundary of the desired easement area (275'x20' – 5,500 square feet).

4. In order to correct the hydraulic condition at the lateral drainage connection between the Roberts Landing Mitigation Marshes and Estudillo Canal, the District plans to plug and abandon in place the City-owned twin thirty-six inch (36") culverts on the south side of the channel downstream of UPRR, to mitigate tidal flows and to prevent tidal flows from entering Estudillo Canal.
5. Upon the approvals of and authorizations by the City, as provided herein, the District will include the repair of the Monarch Bay Drive Bridge south abutment embankment ("City Bridge Improvements") in the District Project. The City will reimburse the District for any and all actual costs of construction of the City Bridge Improvements, including 15% of actual City construction cost for construction contract administration. The primary anticipated components of the City Bridge Improvements include removal and disposal of existing concrete rubble and placement of rock slope protection.

District and City shall implement those activities for which they are each respectively responsible as described in Exhibit C, "Project Implementation" of this Agreement.

C. Indemnity Provisions

1. The City agrees to defend, indemnify, and hold harmless the District (with legal counsel reasonably acceptable to the District), the County of Alameda, their governing bodies, their predecessors, successors, assignees, agents, departments, officials, representatives,

employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively “District Indemnitees”) from any and all acts, claims, liabilities and losses by whomever asserted arising out of or relating to the City Bridge Improvements or City’s performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the District Indemnitees.

2. The District agrees to defend, indemnify, and hold harmless the City, its Council members, its predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively “City Indemnitees”) from any and all acts, claims, liabilities and losses by whomever asserted arising out of District’s performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the City Indemnitees.
3. District shall include a provision in its construction contract with the general contractor and its subcontractor(s) on the Project requiring the general contractor and its subcontractor(s) to indemnify City, to the fullest extent permitted by law, for damages resulting from the work of the general contractor and its subcontractors excluding indemnity for the sole negligence and/or willful misconduct of City. District shall also include a provision in its construction contract with the general contractor that the general contractor and all of its subcontractor(s) on the project shall have and maintain during the duration of the construction project insurance coverage, evidenced by current insurance certificates and all applicable endorsements naming City as an additional insured on all insurance coverages required by the District under the construction contract.

D. Employer/Employee Relationship

No relationship of employer and employee is created by this Agreement, it being understood that City and District shall act hereunder independently of one another; and that personnel employed or contracted by the District shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind; District shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, Federal and State income taxes, and in connection therewith District shall indemnify and hold City harmless from any and all liability which District may incur because of District’s failure to pay such taxes; that District does, by this Agreement, agree to perform its work and functions at all times in strict accordance with currently approved methods and practices, and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards of the District.

E. Amendments

If, during the term of this Agreement it becomes necessary to amend or add to the terms and conditions of this Agreement, such amendments or additions shall be approved by the City Manager , and the Board of Supervisors. Any specific interpretations of the provisions of this

Agreement, may be made by and between City and District in writing between the City Manager or his designee, and the Director of Public Works . Such interpretations shall be deemed incorporated herein and where applicable, be deemed of equal force and effect with any of the terms and conditions contained herein, unless the amendment requires an additional expenditure of funds by either party or changes a substantive term of the Agreement.

F. Conformity with Law and Safety

District and City shall each observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over the scope of services or any part hereof, including all provisions of the California Occupational Safety and Health Act, and all federal, state, municipal and local safety regulations. Performance by each party to this Agreement must be in accordance with all laws, ordinances, codes, and regulations.

G. Term of Agreement

The parties to this Agreement agree to work together in the spirit of cooperation and good faith and shall use reasonable efforts to accomplish the particular obligations set forth herein. Whenever mutual agreement is provided for in this Agreement, no party shall unreasonably withhold its approval.

In the event of any disagreement concerning the interpretation or implementation of this Agreement, the parties shall make good faith efforts to resolve their differences amongst the parties' principals first. If such efforts fail, then the parties agree to utilize a mutually agreed-upon form of alternative dispute resolution, with costs to be borne equally by the parties. Each party shall bear its own attorneys' fees and costs.

This Agreement shall terminate when the City and District have accepted the Project as complete and the City has granted an easement to the District, described in Exhibit B, and that easement has been recorded, provided, however, that the obligations of this Agreement, which by their nature would continue beyond the termination or expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Section C) and Conformity With Law and Safety (Section E), shall survive termination or expiration.

H. Insurance/Self Insurance

District and City shall procure and maintain liability insurance limits of at least \$2,000,000 against claims for injuries to persons or damage to property that may arise from or in connection with any activities by its agents, representatives, employees, or contractors associated with this agreement. District and City may satisfy the coverage required in whole or in part through participation in a self-insurance program or insurance pooling arrangement, or any combination of these. No policies or bonds are required of either party as to any provisions of this Agreement.

I. Workers Compensation

District is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at District's own cost and expense and further, neither District nor its carrier shall be entitled to recover from City any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

City is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at City's own cost and expense and further, neither City nor its carrier shall be entitled to recover from District any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

J. Choice of Law

This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

K. Notices

All notices required under this Agreement must be in writing and may be given either personally or by registered or certified mail (return receipt requested), or by facsimile. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the parties at their address set forth below:

District

Daniel Woldesenbet, Ph.D., P.E.
Director
Alameda County Flood Control and
Water Conservation District
399 Elmhurst Street
Hayward, CA 94544

City of San Leandro

Keith Cooke, P.E.
Engineering and Transportation Director
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

L. Counterparts

This Agreement may be executed in counterpart and each signed document will constitute the whole as if a single document was signed by both District and City.

M. Third parties

Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement.

N. Severability

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

Execution

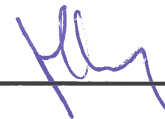
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By: 
Richard Valle
President, Board of Supervisors

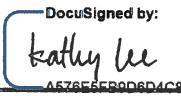
Date: 4/17/20

CITY OF SAN LEANDRO,
a local public agency of the State of
California

By: 
Jeff Kay
City Manager

Date: 5/11/20

Approved as to form:
Donna Ziegler, County Counsel

By: 
Kathy Lee, Deputy County Counsel

3492238.1

Approved as to form:
Richard D. Pio Roda, City Attorney

By: 
City Attorney

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement



LEGEND:

- 1 Monarch Bay Drive Bridge
(City owned and maintained)
- 2 Estudillo Canal Tidegate Structure
(District owned and maintained)
- 3 Golf Course Bridge
(City owned and maintained)
- 4 City Sediment Drying Basin
(City owned and maintained)
- 5 South Levee Lowering
(District owned and maintained)
- 6 Twin 36" Lateral Culvert Connection-
Tidegates #40 and #42. (City owned
and maintained; to be abandoned
By District in place)

EXHIBIT B

ESTUDILLO CANAL

ESTUDILLO CANAL CENTER LINE

80+00

6+00

B-LINE

MATCH EXISTING GRADE

EXISTING 24" CMP PIPE TO REMAIN, PROTECT IN PLACE

CONCRETE CUTOFF WALL

CONCRETE MAINTENANCE ROAD WITH 10:1 RAMP

5+00

4+00

3+00

MATCH EXISTING GRADE

2+00

DISTRICT R/W

CITY R/W

NEW DRAINAGE EASEMENT (275' X 20' = 5,500 SQ. FT.)

ARTICULATED CONCRETE BLOCK MAT

CITY OF SAN LEANDRO
SEDIMENT BASIN

SCALE: 1" = 50'

SCALE: 1" = 50'

Exhibit C - Project Implementation

City agrees to perform the following:

1. Subject to the City Council's approval when applicable, the City shall secure and budget necessary funds in the City's Fiscal Year 2020/21 Budget to reimburse the District for all actual costs involved in the construction of the City Bridge Improvements. For planning purposes only, it is noted that the total estimated construction cost provided by the City is \$173,725. Subject to the City Council's approval when applicable, the City will also adequately budget to fund contingencies and unforeseen construction changes.
2. The City shall facilitate the issuance of an encroachment permit for traffic control/lane closure purposes, if needed. The City shall waive all encroachment permit fees and inspection fees.
3. The City shall be fully responsible in funding all costs associated with the design and construction for the City Bridge Improvements. The City shall prepare the final design documents, contract plans and specifications, and Engineer's Estimate, and provide such documents to the District for incorporation into District's construction documents prior to Project advertisement. The final City plans shall be signed and stamped by a California registered civil engineer.
4. The City shall review all submittals by the District's Contractor within ten (10) Working Days upon receipt, including shop drawings and calculations associated with the City's Bridge Improvements. The City shall not lay any claim against the District in the event of structural failure of the City Bridge Improvements as approved by the City. The District shall not be responsible for any costs associated with the City Bridge Improvements, including, but not limited to, structural failure, construction delays and costs arising from any dispute with the Contractor, except to the extent those costs are attributable to District's sole negligence or willful misconduct.
5. Bid items associated with the City Bridge Improvements will be included as additive bid items in the District's Project bid solicitation. Upon bid opening, the City shall review the lowest responsive responsible bidder's bid and will inform District in writing whether the City will accept the bid amounts associated with the City Bridge Improvements within three (3) working days of bid opening. If the City does not accept the bid amounts for the City Bridge Improvements bid items, those bid items will not be included for award. If City does not accept the City Bridge Improvements bid item amounts, District shall not be responsible for and shall have no obligation to re-advertise the City Bridge Improvements.
6. If the City accepts the City Bridge Improvement amounts listed by the low bidder, the City shall fund the actual construction cost, based on the final progress payment to the Contractor for the City's additive bid items, including any Construction Change Order(s) associated with the construction of the City Bridge Improvements approved by the City. The District will submit an invoice with supporting documentation requesting reimbursement to the District. The City shall reimburse the District within 45 calendar days upon receipt of the invoice. City's additive bid items could include the following:
 - A1. Sediment Curtain (Lump Sum)
 - A2. Removal and Disposal of Concrete Rubbles (Cubic Yard)
 - A3. Earthwork (Lump Sum)

A4. Rock Slope Protection (Ton)

A5. Cement Grout (Cubic Yard)

A6. Temporary Fence (Lump Sum)

7. Upon construction completion, the City shall conduct a joint site walk-through with District staff to identify punch list items, if any, related to the construction work performed.
8. The District has no obligation for the maintenance, performance, or operation of the Monarch Bay Drive Bridge. Once the construction work is accepted by the City and the one year warranty period for the new work has expired, the District will have no obligation relating to the repair of the Monarch Bay Drive Bridge or the City Bridge Improvements. The City shall bear full responsibility of all future maintenance and repair of the Monarch Bay Drive Bridge.
9. The City shall grant an easement to the portion of the articulated concrete mat that will be located in the City's Dredge Materials Management Site. District shall maintain the articulated concrete mat and any other improvements constructed within the easement. The grant of easement shall occur through a separate document. The grant of easement should be completed within six (6) months of signing of this Agreement.
10. The City agrees to allow the District to permanently close and abandon in place the City-owned drainage structure located in the south levee approximately 50 feet downstream of UPRR.

District agrees to perform the following:

1. The District will prepare and submit environmental regulatory permit applications for the Project and secure the necessary permits prior to beginning of construction.
2. The District will prepare the contract plans, specifications, and estimates for the Project, excluding the City Bridge Improvements.
3. The District will include language in the construction contract document to require its contractor and its contractor's sub-contractor(s) name City of San Leandro as an additional insured, with all endorsements for all insurance coverages required by District in its contract with the general contractor.
4. The District will be responsible for the advertisement of the Project for bids, evaluation of bid results, award of a construction contract to the lowest responsible responsive bidder, surveying, construction testing, and inspection, and other contract administration. The City recognizes that the progress of the Project may be delayed as a result of unreasonably high or unacceptable bids. The District will inform the City of any decision to reject all bids and re-advertise the project at a later date deemed reasonable to the District. The City shall not lay claim against the District if the Project schedule is delayed.
5. The District shall fund the construction costs for the District portion of the Project which includes the tidegate structure reconstruction, south levee lowering, and closure of City's drainage structure downstream of UPRR.
6. The District's contractor will apply for a City encroachment permit for traffic control for the construction of the Monarch Bay Drive Bridge south abutment embankment repair, if required by the City.

7. The District will prepare a grant of easement by the City for the portion of articulated concrete mat that will be located within the City's Dredge Materials Management Site.
8. The District will conduct a joint site walk-through with City staff at the completion of the bridge abutment embankment construction and identify punch list items, if any, related to the construction work performed.

3492240.1