

**Agreement for Stream Gauge Services by and between the
Contra Costa County Flood Control and Water Conservation District and the
City of Martinez**

(Alhambra Creek)

This Agreement for Stream Gauge Services (this "Agreement") is made and entered into as of _____ (the "Effective Date"), by and between the City of Martinez, a municipal corporation ("AGENCY"), and the Contra Costa County Flood Control and Water Conservation District, a flood control district ("DISTRICT"), each a "Party" and, collectively, the "Parties".

RECITALS

- A. AGENCY requires the services of staff experienced in providing stream gauge services.
- B. DISTRICT has the necessary experience in providing these services and has affirmed its willingness and ability to perform such work under the terms of this Agreement.

AGREEMENT

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

- 1. Scope of Work. AGENCY hereby retains DISTRICT to perform, and DISTRICT agrees to render those services set forth in Exhibit A attached hereto and incorporated herein by this reference (the "Services"), in accordance with the terms and conditions set forth in this Agreement.
- 2. Term. The term ("Term") of this Agreement commences on the Effective Date, and it expires July 31, 2042, unless it is sooner terminated in accordance with Section 10 (Termination).
- 3. License. AGENCY grants to DISTRICT, for use by DISTRICT, its officers, employees, agents, and contractors, a license to install, monitor, maintain, remove, and replace the Equipment, as defined in Exhibit A, at the Site, as defined in Exhibit A.
- 4. Compensation.
 - a. Equipment. AGENCY shall reimburse DISTRICT for all costs associated with the procurement of all Equipment, as defined in Exhibit A and any labor by DISTRICT staff and DISTRICT contractors to install said

Equipment, not to exceed the payment limit of Thirty Thousand Dollars (\$30,000). All DISTRICT labor under this Agreement will be charged at the fully-burdened hourly rates for the classifications of the employees performing the installation. The actual cost of any DISTRICT contractor labor shall be charged to AGENCY, without markup.

- b. Services. In addition to reimbursement for Equipment under Section 4(a), the maximum amount payable for the Services described in Exhibit A, Section B, is Two Thousand Four Hundred dollars (\$2,400) per fiscal year (July 1 to June 30). On July 1, 2025, and on each July 1 thereafter, the maximum amount payable for Services during that fiscal year will increase by the percentage change in the Engineering News Record's ("ENR") Construction Cost Index for the San Francisco Bay Area for the 12-month period ending on the April 30th immediately preceding the July 1 when the increase takes effect.
 - c. Invoices. Following the end of each fiscal year, DISTRICT will invoice AGENCY for all Equipment procured and Services performed by DISTRICT during that fiscal year. AGENCY will make payment within 30 days after the date an invoice is given to AGENCY. No other compensation for the Equipment or Services will be allowed except as this Agreement may be amended to provide therefor.
 - d. AGENCY's payment obligations under this Section 4 shall survive the termination or expiration of the Agreement.
5. Status of DISTRICT and AGENCY. DISTRICT will perform the Services as an independent contractor, free from the control and direction of AGENCY, in pursuit of DISTRICT's independent purposes, and not as an employee of AGENCY.
6. Indemnification.
 - a. DISTRICT Indemnity. DISTRICT will hold harmless, defend, and indemnify AGENCY and its officers, agents, and employees from and against any and all claims, demands, costs, and liabilities including reasonable attorneys' fees (collectively, "Liabilities"), but only to the extent the Liabilities arise out of or are in any way connected with negligence or willful misconduct of the DISTRICT, its officers, employees, or contractors while performing Services under this Agreement. .
 - b. Agency Indemnity. AGENCY will hold harmless, defend, and indemnify DISTRICT and its officers, agents, and employees from and against any and all Liabilities, but only to the extent the Liabilities arise out of or are in any way connected with the negligence or willful misconduct of the AGENCY, its officers, employees, or contractors with performing the AGENCY's obligations under this Agreement.

- c. Survival. The obligations in this Section 6 shall survive the termination or expiration of this Agreement.

7. Insurance. Each Party shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance:
 - a. Commercial General Liability Coverage. Commercial general liability coverage with limits of no less than Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.
 - b. Automobile Liability Coverage. Automobile liability coverage covering all vehicles used in the performance of this Agreement for at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.
 - c. Compliance with State Workers' Compensation Requirements. Each Party will insure itself against liability for Workers' Compensation pursuant to the provisions of California Labor Code section 3700, et. seq. and shall at all times, upon demand, furnish proof that Workers' Compensation insurance is being maintained in full force and effect in accordance with California Labor Code.
 - d. Other Insurance Provisions. The insurance of each Party will be in force during the term of this Agreement and will not be cancelled without thirty (30) days prior written notice to the other Party by certified mail. AGENCY or DISTRICT (as applicable), its officers, agents, and employees will be named as additional insureds on the other Party's commercial general and automobile liability policies. Each Party will provide a certificate of insurance or evidence of self-insurance to the other Party.
 - e. Self-Insurance. Each Party, at its sole discretion, may satisfy its insurance obligations stated above by providing satisfactory evidence that it is self-insured and has sufficient financial resources to meet the insurance obligations stated herein.

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

9. Assignment. Neither Party may assign this Agreement or any part of it, or any monies due or to become due under it, without the prior written consent of the other Party.

10. Termination. Either Party may terminate this Agreement at any time after a discussion between the DISTRICT's Chief Engineer, or designee, and the CITY's City Engineer, or designee, and following 30 days' advance written notice to the other Party. AGENCY will satisfy all of its financial obligations under Section 4 (Compensation) that accrue prior to the termination date.
 - a. At the end of the Term, or if AGENCY decides to discontinue the stream gauge operation before termination, for any reason, DISTRICT shall, upon written direction from AGENCY, remove the Equipment at AGENCY's expense within 60 days. Equipment will be provided to the AGENCY following removal, except to the extent Section 10(b) provides otherwise. The cost to remove the Equipment will be charged to AGENCY separate from costs in Section 4 (Compensation), and the AGENCY shall pay the cost to remove the Equipment within 30 days after receiving an invoice and demand for payment from the DISTRICT. The AGENCY's obligation to pay the DISTRICT's cost to remove the Equipment under this Section 10(a) shall survive the termination or expiration of this Agreement.
 - b. Upon termination of this Agreement, if DISTRICT desires to take ownership of the Equipment from AGENCY, and if AGENCY agrees, DISTRICT will reimburse AGENCY for the original Equipment costs, depreciating the costs of the Equipment by 10% per year for up to ten (10) years after installation. The cost to purchase any Equipment will be paid to AGENCY within 30 days following demand for payment by AGENCY. The DISTRICT's obligation to pay AGENCY for any purchased Equipment under this Section 10(b) shall survive the termination or expiration of this Agreement.
 - c. DISTRICT may apply for a permit or enter into a separate agreement with AGENCY to keep purchased Equipment at Site, as defined in Exhibit A.

11. Choice of Law. This Agreement shall be governed by the laws of the State of California.
12. Authority. The individuals executing this Agreement on behalf of the Parties each represent and warrant that they have the legal power, right and actual authority to bind their respective Party to the terms and conditions of this Agreement.
13. Counterparts. This Agreement may be executed in counterparts that, together, constitute one and the same instrument.

[Remainder of page left blank; signatures on next page(s).]

CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT:

By: _____
Warren Lai
Chief Engineer

APPROVED AS TO FORM:
Thomas L. Geiger, County Counsel

By: _____
Name
Deputy County Counsel

CITY OF MARTINEZ:

By: _____
Joe Enke
City Engineer

ATTEST:

By: _____
Name
City Clerk

APPROVED AS TO FORM:

By: _____
Name
City Attorney

Exhibit A

A. Background

The Contra Costa County Flood Control and Water Conservation District (“DISTRICT”) collects and analyzes precipitation and stream level data. DISTRICT staff or its subcontractors maintain rain and stream gauge equipment throughout Contra Costa County.

The City of Martinez (“AGENCY”) desires to collect and analyze stream level on Alhambra Creek (also known as Arroyo del Hombre) on the Ward Street bridge crossing in Martinez, California (“Site”). The DISTRICT and AGENCY have agreed, in a coordinated effort, to procure, install, operate, and maintain a stream gauge that will collect stream level data. Wintertime stream level data, collected at a downstream location, will also be collected using temporary depth sensors installed before and removed after the winter seasons. The purpose for the AGENCY is to assess the creek’s hydraulic capacity and the need for removing sediment and/or vegetation from the creek.

B. Scope of Services

1. Task 1: Procurement of Equipment and Materials

- (a) DISTRICT shall purchase all necessary equipment and materials to build and install the stream gauge. Equipment and materials include, but are not limited to, the following (hereinafter referred to as “Equipment”): computerized equipment, batteries, cellular modem, radar-based water level sensors, signal wires, solar panel, cellular antenna, mast, staff gauge plates, bracket to support sensor and interpretive panel on bridge rail, equipment cabinet, two (2) HOBO sensors for wintertime stream level data collection at point downstream, and additional equipment and parts required for installation. All Equipment shall remain the property of AGENCY, except as provided in Section 10(b) of the Agreement.
- (b) AGENCY’s City Engineer, or designee, shall review and approve all materials to be placed, costs, and locations prior to DISTRICT proceeding with work.

2. Task 2: Installation of the Stream Gauge

- (a) DISTRICT shall install, or cause its subcontractor to install, Equipment at the Site, in a configuration approved in advance by the AGENCY’s City Engineer, or designee.
- (b) AGENCY shall provide all required permits and approvals required for Equipment

installation, access, and operation of the stream gauge while the Equipment remains in place at no cost to the DISTRICT.

3. Task 3: Continued Operation and Maintenance of the Stream Gauge.

DISTRICT shall perform, or cause its subcontractor to perform, continued operations and maintenance of the Equipment annually while stream data is desired by the AGENCY.