

AGREEMENT

**Construction and Maintenance Agreement for the Colma Creek Flood
Control Improvements Mitigation Project – San Mateo County Flood
Control District and the City of South San Francisco**

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between the SAN MATEO COUNTY FLOOD CONTROL DISTRICT, a public agency hereinafter called "District", and the CITY OF SOUTH SAN FRANCISCO, a municipal corporation of the State of California, hereinafter called "City".

WITNESSETH:

WHEREAS, District is the owner of certain real property (Property) located in the City of South San Francisco, County of San Mateo, State of California, as shown on Exhibit A attached hereto and incorporated herein; and

WHEREAS, City has been granted certain real property by the California State Lands Commission (State Lands) pursuant to Chapter 345, Statutes of 1913, and as amended, as shown on Exhibits A and B attached hereto and incorporated herein; and

WHEREAS, District proposes to implement a habitat mitigation plan, as a condition of receiving permits to construct flood control improvements in Colma Creek between Spruce and

San Mateo Avenues, and within the Property and State Lands as shown on Exhibits A and B; and more particularly shown on the plans entitled, "San Mateo County, California, Colma Creek Habitat Mitigation Project in the South San Francisco Area," and specifications entitled, "Colma Creek Habitat Mitigation Project in the South San Francisco Area, Total Project Approximately 4.5 Acres with Appurtenant Work Thereto in San Mateo County", dated June 4, 2004 hereinafter called "Plans" and "Specifications", respectively; and

WHEREAS, the City has constructed a pedestrian bridge and trail improvements (Bridge) over Colma Creek which provides public access along the San Francisco Bay shoreline within State Lands; and

WHEREAS, the northeasterly abutment for the Bridge is located on District's Property; and

WHEREAS, the City agrees to the need to construct the Project and wishes to cooperate with the District to expedite the Project;

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. District shall construct Project as shown in Plans and Specifications.
2. District agrees to execute a form of easement to City for the Bridge in connection with the Bridge.
3. In consideration of the District granting the Bridge easement, City agrees to become a co-applicant with District, as required by the Bay Conservation and Development Commission (BCDC), and grant access to District for Project work and maintenance on State Lands.

4. District agrees to make all necessary arrangements with the owner or owners of public utilities for removal and/or relocation of all utilities above or below ground that may conflict with the Project.

5. City shall have the right to review and approve all change orders for the Project that impact City infrastructure, public safety or City facilities and appurtenances. All approved change orders shall be in accordance with City standards. City agrees that it shall not unreasonably withhold its consent to change orders.

6. District agrees that upon completion of the work District shall own the improvements constructed in connection with the Project and shall be responsible for all maintenance and repair of those improvements after completion and acceptance of the work and during the required 5-year monitoring period as required by the BCDC permit. Said maintenance of improvements does not include the maintenance of the Bridge previously constructed and currently maintained by City.

7. Termination of this Agreement shall occur upon completion of the 5-year monitoring period mandated by the BCDC, which shall begin after Project completion. Maintenance of Bridge shall continue to be the responsibility of the City upon termination of Agreement.

8. City shall indemnify, defend, and hold harmless the District its officers, agents, and employees from all claims, damages, suits or actions of every name, kind, and description, arising out of or relating to the matters covered by this Agreement to the extent such claims, suits or actions are due to the negligence or willful misconduct of City or City's failure to perform obligations required of City under this Agreement.

Likewise, the District shall indemnify, defend, and hold harmless the City its officers, agents, and employees from all claims, suits or actions of every name, kind, and description, arising out of or relating to the matters covered by this Agreement to the extent that such claims, suits or actions are due to the negligence or willful misconduct of the District or District's failure to perform obligations required of District under this Agreement.

The duty to defend, indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

The District shall require the Contractor to name City, its officers, agents, and employees and the District as additional insureds on all insurance documents for this Project and to include all work performed on behalf of the City in the bonds, warranties and guaranties to be furnished by Contractor.

The benefits arising under this Section of this Agreement shall inure to the benefit of the District's and City's respective directors, officers, employees and agents.

9. This Agreement shall be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have affixed their hands on the day and year first above written.

"District"

SAN MATEO COUNTY FLOOD
CONTROL DISTRICT

BY

Mark Church, President
Board of Supervisors
County of San Mateo

ATTEST:

County Manager/Clerk of the
Board of Supervisors

"City"

CITY OF SOUTH SAN FRANCISCO

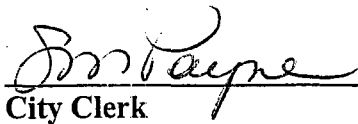
BY



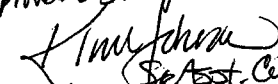
City Manager
City of South San Francisco

ATTEST:

BY



City Clerk

Approved as to form

Sec. Asst. City Atty
10/26/04