




**Agenda Item No: 4.e**  
**Meeting Date: February 6, 2023**

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Public Works**

**Prepared by: April Miller, Public Works Director**      **City Manager Approval:** 

File No.:

**TOPIC: CREEK MAINTENANCE AGREEMENT FOR MARIN COUNTY FLOOD CONTROL ZONE NO. 6**

**SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE CREEK MAINTENANCE AGREEMENT FOR THE FIVE-YEAR MAINTENANCE OF DRAINAGE CHANNELS WITHIN THE CITY OF SAN RAFAEL AND FLOOD CONTROL ZONE NO. 6 OF THE MARIN COUNTY FLOOD AND WATER CONSERVATION DISTRICT**

**RECOMMENDATION:**  
Staff recommends that the City Council adopt the resolution approving and authorizing the City Manager to execute a creek maintenance agreement with the Marin County Flood Control and Water Conservation District (“District”) for the period of July 1st, 2022 to June 30th, 2027 within waterways and drainage areas of the City of San Rafael and Flood Control and Water Conservation District Zone Number 6 (“Zone 6”).

**BACKGROUND:**  
From 2017 to 2022, DPW maintenance crews provided vegetation and sediment maintenance work and debris removal management for various drainage channels and waterways within Zone 6 (See Maintenance Sites – Attachment 2). Work was conducted in accordance with a 5-year creek maintenance agreement that had been in effect from 2017 to 2022, which defined the nature of work performed, the location and timing of all work to be completed, and any applicable reimbursable expenses between the District and the City. A new maintenance agreement is required to define the parameters for the period of July 1<sup>st</sup>, 2022 to June 30<sup>th</sup>, 2027.

**ANALYSIS:**  
City staff met regularly with District staff and members of the Zone 6 Advisory Board to determine mutually agreeable terms and conditions for the upcoming five-year maintenance agreement (see Attachment 2 – Maintenance Agreement). Staff from both agencies agreed to the current work maintenance requirements stipulated in the previous agreement, including work to be fulfilled during certain times of the fiscal year to meet compliance with State and Federal regulations.

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

Given the rising costs of supplies, material and labor due to inflation and supply chain issues in 2022, City staff requested a substantial increase of reimbursable funds from the District, from \$8,000 per fiscal year, to \$28,000 per fiscal year. City staff negotiated terms regarding public notices and communications, contracted bidding services, maintenance records and reimbursement stipulations, and the responsibility to apply for and maintain all applicable Local, State and Federal permissions to perform routine maintenance and emergency response work activities within the district.

**ENVIRONMENTAL DETERMINATION:**

As part of a larger permitting effort for all maintenance work conducted by Department of Public Works (DPW) staff for maintenance and emergency services response efforts, City staff will contract with a professional services consultant to complete all environmental monitoring, assessments and impact analysis studies required of any state, local, and federal permitting agency to conduct the work prescribed in the maintenance agreement. At this time, City staff have found there to be no environmental impact from routine vegetation and sediment management or debris removal work conducted by DPW maintenance crews in the prescribed work areas.

**COMMUNITY OUTREACH:**

City staff worked closely with Zone 6 staff and Board members to draft a new five-year maintenance agreement.

**FISCAL IMPACT:**

The District agrees to pay the City up to \$28,000 per fiscal year in reimbursable expenses, for a total of \$140,000 for the total five-year term of the agreement. City staff have estimated this to be a fair reimbursable rate for DPW maintenance crew staff time.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Adopt the resolution as presented and approve the City Manager to enter the agreement with the Marin County Flood Control and Water Conservation District.
2. Do not accept the resolution and direct staff to amend the creek maintenance agreement.
3. Do not accept the resolution, reject the creek maintenance agreement and provide further direction to staff.

**RECOMMENDED ACTION:**

Adopt the resolution.

**ATTACHMENT:**

1. Resolution
2. Draft Creek Maintenance Agreement, Maintenance Sites, Map

**RESOLUTION NO.**

**A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO THE CREEK MAINTENANCE AGREEMENT FOR THE FIVE-YEAR MAINTENANCE OF DRAINAGE CHANNELS WITHIN THE CITY OF SAN RAFAEL AND FLOOD CONTROL ZONE NO. 6 OF THE MARIN COUNTY FLOOD AND WATER CONSERVATION DISTRICT**

**WHEREAS**, the City of San Rafael and the Marin County Flood Control and Water Conservation District have in common the power to maintain, repair, and manage drainage channels within the Flood Control Zone No. 6 for the protection of the public; and

**WHEREAS**, on November 15, 2017, the City of San Rafael and the Marin County Flood Control and Water Conservation District entered into a five-year agreement to cooperate on the maintenance of the drainage channels within the City of San Rafael and Flood Control District Zone No. 6.; and

**WHEREAS**, the City of San Rafael desires to continue to cooperate with the Marin County Flood Control and Water Conservation District and enter into a five-year agreement on the maintenance of the drainage channels within the City of San Rafael and Flood Control District Zone No. 6.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of San Rafael that the City Manager is hereby authorized to enter into the Creek Maintenance Agreement for the five-year maintenance of drainage channels within the City of San Rafael and Flood Control Zone No. 6 of the Marin County Flood and Water Conservation District, for the time period of July 1, 2022 through June 30, 2027, in a form approved by the City Attorney.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 6<sup>th</sup> day of February 2023 by the following vote, to wit:

AYES:            Councilmembers:  
NOES:            Councilmembers:  
ABSENT:        Councilmembers:

Lindsay Lara, City Clerk

**CREEK MAINTENANCE AGREEMENT**  
FOR THE FIVE-YEAR MAINTENANCE OF VARIOUS DRAINAGE CHANNELS, AND PORTIONS  
THEREOF, WITHIN THE CITY OF SAN RAFAEL AND FLOOD CONTROL ZONE NO. 6  
OF THE MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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This CREEK MAINTENANCE AGREEMENT, hereinafter the "AGREEMENT," made and entered into on the dates shown below by and between the MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political subdivision of the State of California hereinafter referred to as "DISTRICT," and the CITY OF SAN RAFAEL, political subdivision of the State of California, hereinafter referred to as "CITY."

RECITALS

WHEREAS, CITY and DISTRICT have in common the power to maintain, repair, and manage drainage channels for the protection of the public; and

WHEREAS, on November 15, 2017, CITY and DISTRICT entered into an agreement to cooperate on the maintenance of the drainage channels with the City of San Rafael and Flood Control District Zone No. 6.

WHEREAS, CITY and DISTRICT desire to continue to cooperate on the maintenance of the drainage channels within the City of San Rafael and Flood Control District Zone No. 6 on the terms set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. CITY responsibilities:
  - a) The CITY shall perform vegetation and sediment maintenance work and debris removal on the portions of the drainage channels listed as Maintenance Sites in Exhibit "A," attached hereto. Such maintenance work includes vegetation management (limbing and trimming trees and shrubs) and debris removal, which affords proper drainage channel maintenance including, but not limited to, storm related work/emergency response. The CITY must obtain the appropriate Local, State and Federal permits for all work, in addition to any permission required by SMART.
  - b) The CITY shall perform the maintenance work described in subparagraph (a) as needed to maintain proper drainage during the Fiscal Year periods from July 1<sup>st</sup>, 2022 to June 30<sup>th</sup>, 2027. The timing of vegetation and sediment maintenance in non-tidal areas is limited to August 1 through October 15 of each year. The timing of vegetation and sediment maintenance in tidal areas is limited to September 1 through October 15 of each year, in accordance with State and Federal authorized work windows for the endangered Ridgway's Rail bird. Work in tidal areas outside of the September 1 to October 15 period may only be performed for storm related or emergency response purposes, and City must notify regulatory agencies of emergency work in the manner required by agencies with jurisdiction.
  - c) The CITY may perform vegetation management work in drainage channels for fire fuel reduction purposes outside of the time periods specified in paragraph (b). CITY may request reimbursement from DISTRICT for vegetation management work for fire fuels management for the sites listed in Exhibit "A" only. The CITY is responsible for obtaining any necessary permits and permissions to conduct this fuel reduction.

- d) The CITY shall invite Conservation Corps North Bay (“CCNB”) to submit proposals for work in-channel.
- e) The CITY shall notify the adjacent neighborhoods on NextDoor at least one (1) week prior to the commencement of the maintenance work described in subparagraph (a) above. The notification shall advise the date and time said maintenance work is scheduled to commence and the approximate amount of time expected to complete said maintenance work.
- f) The CITY must obtain all required permits and submit copies of such permits to DISTRICT upon request. CITY must obtain Waste Discharge/Water Quality Certification and Lake and Streambed Alteration Agreement permits for removal of native vegetation or large woody debris (“Vegetation Management”) for the purpose of increasing flow capacity of channels. CITY’s cost to obtain permits are reimbursable by DISTRICT through submission of invoices including staff time, permitting fees, and/or related consultant fees.
- g) The CITY shall notify DISTRICT’S Contract Manager, as set forth below in Paragraph 3, at least five (5) working days prior to the commencement of the maintenance work described in subparagraph (a) above, such that DISTRICT may inspect the maintenance work during the course of its performance. For emergency response work, the CITY shall notify DISTRICT within 2 business days after the work is carried out.
- h) The CITY shall charge DISTRICT for maintenance work at the rate charged by the CITY’s creek maintenance contractor, as evidenced by invoices.
- i) The CITY shall keep and maintain records, for DISTRICT’s examination, of all personnel, material, equipment, fees, and/or outside services which CITY utilizes in the performance of said maintenance work and any associated permitting work.
- j) The CITY shall submit a billing or invoices on or before May 1 of each fiscal year to DISTRICT for maintenance work completed during the prior summer and any emergency storm response related creek maintenance completed during the winter prior; said billing shall include an accounting of all charges for personnel, material, equipment and/or outside services which CITY shall have used for the performance of work; it being specifically understood that CITY shall not for any reason whatsoever bill or claim any amount in excess of the annual amount or 5 year aggregate amount stated in paragraph 2(a) of this agreement.
- k) The CITY shall submit with said billing a list identifying the specific reaches of drainage channels maintained, date(s) maintained, photos of before and after; the types and quantities of materials removed.
- l) The CITY shall indemnify, defend and hold harmless DISTRICT, its officers, agents and employees from and against any and all claims and losses whatsoever arising out of or connected with this Agreement, including, but not limited to CITYs or any contractor hired by City to perform its duties under this Agreement, negligence, recklessness, or willful misconduct in the performance of this Agreement, or by intentional failure to perform hereunder.
- m) The CITY shall comply with all Federal, State and local requirements, and secure all necessary permissions, permits and/or licenses for, and as part of, performing said maintenance work.

2. DISTRICT responsibilities:

- a) The DISTRICT shall pay to CITY within ninety (90) days upon the satisfactory completion of said maintenance work, and upon receiving and auditing the billing therefor and forms and/or permit information listed in paragraph 1(f), the cost of performing such work, a sum no more than \$28,000 per fiscal year (July 1<sup>st</sup> – June 30<sup>th</sup>) for a total sum not to exceed \$140,000 over the full 5-year period of this Agreement.
- b) The DISTRICT reserves the right to inspect CITY's work and environmental regulatory compliance-related submittals and to decide not to compensate the CITY for maintenance claimed if the work does not meet the requirements of any environmental regulatory agencies with jurisdiction or if the work is outside the scope of this agreement per paragraph 1.a) and Exhibit "A".
- c) The DISTRICT shall respond in a timely manner to requests for information related to this Agreement.

3. This Agreement shall be managed and administered on DISTRICT'S behalf by the Contract Manager named below:

Contract Manager:	Hannah Lee
Address:	Marin County Flood Control and Water Conservation District P.O. Box 4186 Room 304 San Rafael, CA 94913-4186
Telephone:	(415) 342-5033
Email:	<a href="mailto:floodinquiry@marincounty.org">floodinquiry@marincounty.org</a> send invoices to dpwffloodinvoices@marincounty.org

4. This Agreement shall be managed and administered on CITY'S behalf by the Contract Manager(s) named below:

Contract Manager:	April Miller, Public Works Director
Address:	City of San Rafael Department of Public Works 1400 Fifth Avenue San Rafael, CA 94901
Telephone:	(415) 485-3355

5. The term of this Agreement begins on July 1, 2022 and shall be in effect until June 30, 2027, or until all of the Parties obligations under this Agreement are fully satisfied, including DISTRICT's final payment for said maintenance work. Either Party can terminate this Agreement at any time by providing ninety (90) days written notice to the other Party. CITY shall be compensated for all services performed during the term of the Agreement, including the notice period.

6. The parties have set forth the whole of their Agreement with respect to the subject matter hereof. This Agreement supersedes all prior oral or written negotiations, representations, or agreements. This Agreement may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties which expressly refers to this Agreement.

APPROVED AS TO FORM:

"CITY"

\_\_\_\_\_  
CITY Attorney

\_\_\_\_\_  
CITY Manager

Date: \_\_\_\_\_

ATTEST:

"DISTRICT"

\_\_\_\_\_  
Clerk, County of Marin

\_\_\_\_\_  
President, Board of Supervisors  
Marin County Flood Control and  
Water Conservation District

Date: \_\_\_\_\_

EXHIBIT "A"  
MARIN COUNTY FLOOD CONTROL & WATER  
CONSERVATION DISTRICT CREEK  
MAINTENANCE AGREEMENT 2022-2027

MAINTENANCE SITES

Creek between El Prado and Mirada Aves
Merrydale Ditch
Corrillo Dr Ditches (403/405 and 26/24)
Creek between 380 Merrydale and 3833 Redwood Hwy
Concrete Channel from Los Ranchitos Rd to railroad track



EXHIBIT "A" MAP

MARIN COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

DRAINAGE MAINTENANCE AGREEMENT 2022-2027

