

**REIMBURSEMENT AGREEMENT BETWEEN SAN LUIS OBISPO COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT AND THE CITY OF SAN LUIS OBISPO FOR WATERSHED
MAINTENANCE AND EDUCATION PROGRAM**

This Reimbursement Agreement (“Agreement”) is entered into on _____ by and between the San Luis Obispo County Flood Control and Water Conservation District (“District”), acting on behalf of District Flood Control Zone 9 (“Zone 9”), and the City of San Luis Obispo (“City”) (each a “Party” and collectively, “Parties”).

WHEREAS, Zone 9 includes the San Luis Obispo Creek (“Creek”) watershed (“Watershed”) and its tributaries; and

WHEREAS, the City is located wholly within the Watershed and the Zone 9 boundaries; and

WHEREAS, by coordinating in Watershed maintenance and education activities, the City and District can more economically address issues within the Watershed; and

WHEREAS, such a cooperative program has been successfully completed in the past pursuant to prior reimbursement agreements between the District and City, including but not limited to the reimbursement agreements dated September 6, 2013 and August 21, 2018 (collectively, “Prior Agreements”) and in accordance with the Waterway Management Plan and associated Environmental Impact Report certified by the District on February 10, 2004; and

WHEREAS, the Parties desire to continue in and expand their coordination with respect to Watershed maintenance and education activities, both within and outside of City limits, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein set forth, the District and City mutually covenant and agree as follows:

A. REIMBURSABLE EXPENSES

The City shall be eligible for reimbursement for expenses incurred by the City pursuant to the terms and conditions set forth in this Agreement subject to the following:

1. Type of Activities Eligible for Reimbursement.

Only those activities within Zone 9 identified below are eligible for reimbursement:

Removal of debris, sediment and vegetation which adversely affect the capacity of waterways or which might be more difficult or costly to remove if moved by flood flows to different locations where they could cause damage to the Creek or flooding to adjacent improved property.

Removal and proper disposal of detrimental exotic plants from throughout the Watershed and any re-vegetation project to minimize damage from flood flows or for restoration after removal of exotic plants.

Stabilization of Creek banks to prevent erosion causing sedimentation or property damage.

Development and construction of projects identified in the Waterway Management Plan adopted by the City on October 21, 2003 and District by Resolution 2004-51 on February 10, 2004.

Annual notice to property owners along the Creek, and wet weather flood prevention information distributed to the general public, including flyers, public service announcements and web sites.

2. Inclusion in Work Plan.

Only those work activities properly identified in the annual Work Plan (described below) prepared by the City and included in the District's current fiscal year budget as adopted by the District's Board of Supervisors ("Board") are eligible for reimbursement.

3. Compliance with Agreement.

Only activities performed in compliance with the provisions of this Agreement are eligible for reimbursement.

B. OBLIGATIONS OF CITY

The City shall submit a work plan to the District for each upcoming fiscal year, prior to December 1 of each year ("Work Plan"). The Work Plan shall include a description and budget for the work activities proposed by the City for the upcoming fiscal year.

The City shall act as the lead agency in complying with the California Environmental Quality Act ("CEQA") for all work done within the City limits with the following limited exception: the City shall act as the responsible agency in complying with CEQA for the Mid-Higuera Bypass Project.

The City shall acquire all permits for work within its jurisdiction with the following limited exception: the City shall not be responsible for providing staffing or other resources to acquire regulatory environmental permits for the Mid-Higuera Bypass Project.

The City shall be responsible for acquiring any landowner permission needed to accomplish any work within its jurisdiction.

Should any work within the City involve the abatement of nuisances, the removal of trees, or other obstructions, such shall be performed in accordance with due process of law under the City's abatement ordinances or State law. The abatement of said nuisances shall be the sole responsibility of the City.

Any streambed clearing work identified in the Work Plan shall be carried out prior to the rainy season with follow-up work done during the rainy season as appropriate.

The City shall comply with all applicable federal, state and local laws and regulations in performing any activities related to this Agreement.

The City shall provide quarterly statements to the District documenting the expenses for which the City is seeking reimbursement. Said statements shall specify the activities related to the expenses for which the City seeks reimbursement.

The City shall recognize and acknowledge the District's financial contribution to the activities identified in Section A of this Agreement through prominent mention during any oral presentation or in writing on any signs, promotional materials, press releases, publications, advertisements, or exhibits prepared in connection with or referring to the reimbursable activities.

C. OBLIGATIONS OF DISTRICT

District staff shall review the Work Plan submitted by the City and shall coordinate with the City to refine the Work Plan, as appropriate, so that it is consistent with the intent of this Agreement and the District's budgetary plans. District staff thereafter shall prepare a draft Zone 9 budget request for the upcoming fiscal year to include those activities that District staff considers consistent with the intent of this Agreement and the District's budgetary plans. The District shall include on an agenda the draft budget request for review by the Zone 9 Advisory Committee ("Committee") to allow the Committee to make a recommendation to the Board regarding said budget request.

The District shall provide reimbursement to the City for eligible City expenses incurred pursuant to this Agreement on a periodic basis as funds are available, within the budgetary limits approved by the Board or its designee provided that the City submits satisfactory documentation of City's expenses and work performed.

The District shall act as the lead agency in complying CEQA for: (1) all work done by the City outside of City limits; and (2) the Mid-Higuera Bypass Project.

The District shall be responsible for acquiring any landowner permission needed to accomplish any work done by the City outside of City limits.

The District shall provide staffing and other resources to obtain all necessary permits for: (1) work done by the City outside of City limits; and (2) the Mid-Higuera Bypass Project on behalf of the City who shall be the permittee.

The City is under no obligation, and this Agreement does not contemplate, commencement of formal nuisance abatement actions by the City outside of the City's jurisdiction.

The District shall comply with all applicable federal, state and local laws and regulations in performing any activities related to this Agreement.

D. GENERAL TERMS

1. Term.

This Agreement shall become effective on the date fully executed by the Parties and shall have an initial term of five (5) years. This Agreement shall renew automatically for four (4) successive five (5) year terms. Notwithstanding the foregoing, either Party may terminate this Agreement at any time by giving ninety (90) days written notice of termination to the other Party.

2. Indemnification for Conduct Within City Limits.

Each Party hereto shall defend, indemnify and save harmless the other Party and other Party's officers, agents and employees from and against all loss, claims, demands, liabilities, costs, expenses, damages, including reasonable legal counsels' fees and costs of litigation, causes of action, including but not limited to inverse condemnation and judgments arising out of the

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indemnifying party's performance or attempt to perform its obligations pursuant to the provisions of this Agreement, including both acts and omissions to act. However, neither Party shall be indemnified hereunder for any loss, claims, demands, liabilities, costs, expenses, damages, or causes of action resulting from the sole negligence or willful misconduct of the other Party occurring within City limits.

Deleted: the sole negligence or sole intentional acts of the Party or its officers, agents or employees or independent contractors solely responsible to such Party in performing or attempting to perform pursuant to the provisions of this Agreement, including both acts and omissions to act.

3. Indemnification for Conduct Outside of City Limits.

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Indemnification for Joint Conduct between the District and the City. ¶
The City shall defend, indemnify and save harmless the District, and its officers, agents and employees from and against any and all claims, demands, liabilities, costs, expenses, damages, causes of action, including but not limited to inverse condemnation and judgments arising out of the joint negligence or joint intentional acts of the City and District and their officers, agents, employees or independent contractors directly responsible to them in performing or attempting to perform pursuant to the provisions of this Agreement, including both acts and omissions to act, provided however that the District shall be solely responsible for the amount of judgment rendered solely against the District or one of its agents or employees if such judgment is specifically rendered in court and based on a finding of sole responsibility by the District or one of its agents or employees; in the event said judgment is rendered, the City shall not be required to indemnify the District for said judgment

4. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), the District shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation, arising from all conduct by either Party outside of City limits in furtherance of the Parties' obligations under this Agreement. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from the either Party's conduct outside of City limits in furtherance of its obligations under this Agreement, the District shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. However, the City shall be responsible for any loss, claims, demands, liabilities, costs, expenses, damages, or causes of action resulting from the sole negligence or willful misconduct of the City occurring outside of City limits. **Cooperation.**

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The District agrees to cooperate with the City in the defense of any such claims or litigation, and the City agrees to cooperate with the District.

5. Full Agreement.

This Agreement encompasses the entire agreement of the Parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written, including but not limited to the Prior Agreements.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below:

**SAN LUIS OBISPO COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By: _____ Date: _____
Chairperson of the Board
San Luis Obispo County Flood Control and
Water Conservation District
State of California

ATTEST:

By: _____ Date: _____
County Clerk and Ex-Officio Clerk of the
Board of Supervisors, County of San Luis Obispo,
State of California

APPROVED AS TO FORM AND LEGAL EFFECT:

By: _____ Date: _____
Rita L. Neal
County Counsel

CITY OF SAN LUIS OBISPO

By: _____ Date: _____
Derek Johnson
City Manager

APPROVED AS TO FORM AND LEGAL EFFECT:

By: _____ Date: _____
J. Christine Dietrick
City Attorney