

COPY

**COOPERATIVE AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS
ON SAN JOSE CREEK**

THIS AGREEMENT, ENTERED INTO ON Oct 5, 2010, is between the

CITY OF GOLETA, a municipal corporation,
referred to herein as "CITY",

and

Santa Barbara County Flood Control & Water
Conservation District, a political subdivision of
the State of California, referred to herein as
"DISTRICT".

WHEREAS, San Jose Creek is a major watershed that flows through the CITY, and into the Goleta Slough; and

WHEREAS, the DISTRICT owns and maintains certain improvements on San Jose Creek generally from Hollister Ave to the Slough, including a concrete lined channel, excepting culverts and bridges within transportation corridors crossing the creek; and

WHEREAS, CITY owns and maintains Hollister Avenue Bridge over San Jose Creek; and

WHEREAS, Portions of the CITY's "Old Town" are in the 100 year floodplain of San Jose Creek; and

WHEREAS, CITY desires to increase the flood flow capacity of the system by improving and widening the existing channel, (hereinafter the PROJECT), and by replacing the Hollister Ave Bridge as additional City funded work, and

WHEREAS, the PROJECT and the bridge replacement will reduce flooding from San Jose Creek during serious flood events, and serve to reduce the FEMA 100 year Flood Plain within Old Town Goleta; and

WHEREAS, CITY has identified this PROJECT as their highest priority for Flood Control within the City and desires that PROJECT be expedited to protect property within the CITY and to facilitate economic development in the area; and

WHEREAS, CITY and DISTRICT have agreed to commit to funding a significant share of the PROJECT partially offset by grants; and

WHEREAS, Design of the PROJECT will also include Fish Passage features within the reconstructed channel, herein referred to as "FISH PASSAGE CHANNEL"; and

WHEREAS, CITY is willing to act as the lead agency the design, compliance with CEQA, Construction, and implementation of PROJECT;

NOW THEREFORE, it is mutually agreed as follows:

SECTION I

CITY SHALL BE OBLIGATED TO:

1. Pay for all costs required to complete PROJECT less contribution by DISTRICT as outlined below.
2. Complete all required Environmental Review process and acquire all permits to construct PROJECT in conformance with said permits.
3. Complete design of the PROJECT and secure approval of the design by DISTRICT and include into the design the Fish Passage Channel.
4. Advertise PROJECT and award construction contract to the lowest responsive and responsible bidder pursuant to State Law.
5. Construct the PROJECT in conformance with the approved Design.
6. Administer Construction Contract and provide weekly construction status meeting to address any issues during construction.
7. Provide Construction Inspection services with a qualified contractor. Such contractor to be mutually acceptable to DISTRICT.
8. Undertake and fund all Right of Way acquisition costs required for the construction including any temporary easements, permanent easements, and private bridge removal or relocation costs.
9. Transfer to DISTRICT all permanent rights of way necessary for continued maintenance of PROJECT, except those portions of the work that constitutes the Fish Passage Channel,
10. Retain the Engineer of Record for consultation with and to approve any design changes or modifications to original design.
11. To bear the cost of all contractor claims processed against PROJECT.
12. To forward Contract Change Orders to DISTRICT for review and approval;
13. Upon completion of PROJECT, provide confirmation from the Contract Inspection Team that the project was completed in accordance with the Plans and Specifications.
14. Upon completion of PROJECT, turn over PROJECT and all channel improvements to DISTRICT, excepting the FISH PASSAGE CHANNEL.
15. Upon completion of construction of PROJECT, be responsible for sediment removal, maintenance, future modification, and repair of the constructed FISH PASSAGE CHANNEL.

16. Upon completion of the construction of the PROJECT, be responsible for future FISH PASSAGE CHANNEL performance discussions, evaluations and modifications if necessary as required by NOAA and State DFG.
17. Be responsible for compliance with State SWPPP requirements, both current and as may be amended.

SECTION II

DISTRICT SHALL BE OBLIGATED TO:

1. To issue an encroachment permit to CITY, including all contractors and consultants for access necessary for construction of PROJECT.
2. To accept permanent right of way acquired for construction of PROJECT by CITY, as determined to be needed for PROJECT by DISTRICT
3. To assign a DISTRICT representative to PROJECT and that DISTRICT representative attend weekly Construction Team meetings and other meetings as necessary.
4. To provide and fund additional construction inspection services for PROJECT beyond that provided by approved construction management team as necessary to satisfy DISTRICT needs.
5. To review construction bids and provide comments to CITY on identification of Lowest Responsible Bidder.
6. To pay CITY a total amount of no more than \$5 Million towards the cost of construction of channel improvements on San Jose Creek provided such costs are attributed to the channel improvements not associated with the Bridge replacement at Hollister Ave or any other costs not attributed to the Channel, as determined by DISTRICT.
7. That the construction cost contribution of by DISTRICT will be paid to CITY in proportional increments each month based on monthly progress report submitted by CITY to DISTRICT.
8. To review and approve Contract Change Orders as appropriate and provide comments to CITY on Construction Change Orders and technical issues arising during construction of PROJECT.
9. To approve change orders associated to the project, but provided that no additional costs from such change orders will increase DISTRICT's contribution.
10. That upon completion of construction of PROJECT, DISTRICT will accept the PROJECT and continue to maintain the new improvements excepting the FISH PASSAGE CHANNEL.

SECTION III

IT IS FURTHER MUTUALLY AGREED THAT:

1. Nothing in the provisions of this agreement is intended to create duties or obligations to or rights in third parties not party to this agreement.
2. Communications on this project will go through the following parties

<u>DISTRICT</u>	<u>CITY</u>
Thomas D. Fayram, Deputy Public Works Director 123 E. Anapamu Street, STE 240 Santa Barbara, CA 93101 Ph 805-568-3436 tfayram@cosbpw.net	Steve Wagner, Community Services Director 130 Cremona Drive, STE B Goleta, CA 93117 PH 805-961-7560 swagner@cityofgoleta.org

SECTION IV

INDEMNITY AND DISCLAIMER

Neither the DISTRICT nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY under or in connection with any work, authority or jurisdiction delegated to city under this Agreement. It is also agreed that, pursuant to California Government Code Section 895.4, CITY shall fully indemnify and hold DISTRICT harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

Neither CITY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement. It is also agreed that, pursuant to California Government Code Section 895.4, DISTRICT shall fully indemnify and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) Occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction delegated to DISTRICT under this Agreement.

SECTION V

AMENDMENT

This Agreement may be amended or adjusted by the parties, from time to time, only in writing approved by both parties.

SECTION VI

APPLICABLE LAW


This Agreement shall be subject to the laws, rules, and regulations in effect within the County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within those jurisdiction. If any provision of this Agreement determined to be invalid, illegal or unenforceable for any reason, that provision shall be deleted from this Agreement and such deletion shall in no way affect, impair, or invalidate any other provision of this Agreement, unless it was material to the consideration for the performance required. If a provision is deleted which is not material to such consideration, the remaining provisions shall be given the force and effect originally intended.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

APPROVE AS TO CONTEXT:

Scott McGolpin
Public Works Director

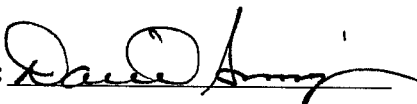
Date: 10/5/12

By: 

CITY OF GOLETA

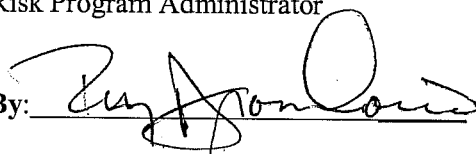
Daniel Singer
City Administrator

Date: 3-31-11

By: 

APPROVED AS TO FORM:

Ray Aromatario
Risk Program Administrator


By: 

ATTEST:

By: 
City Clerk

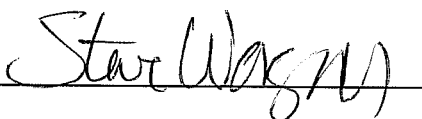
APPROVED AS TO FORM:

Dennis Marshall
County Counsel

By: 
Deputy

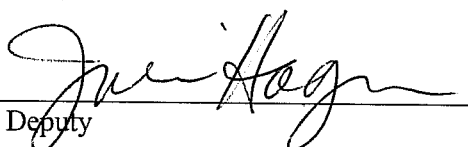
APPROVED AS TO CONTENT:

Steven Wagner
Community Services Director

By: 

APPROVED AS TO ACCOUNTING FORM:

Robert W. Geis, C.P.A.
Auditor-Controller

By: 
Deputy

APPROVED AS TO FORM:

Tim W. Giles
City Attorney

By: 