

LOCAL SPONSOR COST SHARING AGREEMENT

LOWER MISSION CREEK FLOOD CONTROL PROJECT
REACHES 1A – PHASE 2 and MASON STREET BRIDGE CONSTRUCTION

THIS AGREEMENT made and entered this ____ day of _____ 2014, by and between the

City of Santa Barbara, a municipal corporation, hereinafter referred to as "CITY";

and the

Santa Barbara County Flood Control and Water Conservation District, hereinafter referred to as "DISTRICT";

Witnesseth:

WHEREAS, CITY has the authority to construct, establish and maintain facilities for the collection, control, and discharge of storm water and drains pursuant to California Law and the Santa Barbara City Charter; and,

WHEREAS, DISTRICT has the authority to provide facilities for the collection, control, and discharge of storm water and drains in the DISTRICT pursuant to the Santa Barbara County Flood Control and Water Conservation District Act (Stats. 1955, Chapter 1057, p. 2006, as amended); and,

WHEREAS, CITY and DISTRICT are authorized to jointly exercise any power common to both under provisions of Government Code 6500-6514 and CITY and DISTRICT each have powers to investigate, finance and construct drainage improvements within their jurisdictional limits; and,

WHEREAS, "the Lower Mission Creek Flood Control Project," or the "Creek Project," is a multi-jurisdictional project between the United States Army Corps of Engineers (Corps), the CITY, and DISTRICT to mitigate flooding within the City of Santa Barbara, with the CITY and DISTRICT as local sponsors; and,

WHEREAS, the Creek Project would provide benefit to the CITY, and the South Coast Flood Zone within the DISTRICT; and,

WHEREAS, certain CITY bridges are contemplated for replacement as a part of the Creek Project, and such Bridge replacements are being constructed by the CITY; and

WHEREAS, CITY has secured grant funding for the replacement of the Mason Street Bridge (Bridge Project) and desires to initiate construction; and,

WHEREAS, the DISTRICT'S Reach 1A – Phase 2 is identified as that portion of the Creek Project immediately downstream of the Bridge Project; and,

WHEREAS, the DISTRICT and CITY have agreed that construction of Reach 1A-Phase 2 downstream and the Bridge Project are in the interests of the CITY, DISTRICT, and surrounding properties; and,

WHEREAS, the respective project elements of the Reach 1A-Phase 2 and the Bridge Project are identified on Exhibit 1; and,

WHEREAS, the Creek Project and the Bridge Project have separate funding sources, yet the CITY and the DISTRICT have determined that it is in the best public interest to combine the Bridge Project and Reach 1A-Phase 2 into one construction contract, referred to as "Creek and Bridge Project"; and,

WHEREAS, the CITY Planning Commission, acting as the Lead Agency under the California Environmental Quality Act (CEQA), certified and adopted the Creek Project EIS/EIR in 2001, and the DISTRICT Board of Directors, acting as a Responsible Agency, reviewed and considered the environmental effects of the EIS/EIR, appendices and technical studies pursuant to CEQA Section 15096(f), and adopted the CEQA Findings and Statement of Overriding Considerations in May, 2011 pursuant to CEQA Section 15092 as required by CEQA Section 15093.

NOW, THEREFORE, it is mutually agreed by and between the CITY and DISTRICT to coordinate the effort to complete the above portions of the Lower Mission Creek Flood Control Project and the Mason Street Bridge Replacement Project according to the following terms, provisions, limitations and conditions:

SECTION 1. SCOPE OF SERVICES, TERM

For and during the term commencing with the execution of this agreement and continuing until filing of a Notice of Completion verifying that the improvements are completed and installed for the Creek and Bridge Project, the CITY and DISTRICT shall provide services as necessary to produce the improvements required according to the concurrence of the Director of the DISTRICT and the CITY Public Works Director, and according to plans and specifications which are on file with the CITY and DISTRICT.

CITY and DISTRICT shall be responsible for providing their respective services as follows:

A. Services Provided by CITY:

1. Serve as Lead Agency for, and provide the environmental review, architectural review, permitting and permit monitoring required for the

CITY review/approval of the Creek and Bridge Project, and obtain such permits, approvals, access and other similar prerequisites for construction of the improvements, including the required State and Federal resource agency permits for the Bridge Project.

2. Approve all improvements associated with all CITY-owned facilities and provide related design consultation for such improvement as needed.
3. Advertise for bids and award a contract for construction of the Creek and Bridge Project. The City reserves sole discretion to award or reject the base bid for the Project.
4. Subject to the reimbursement provisions below, Construct the Creek and Bridge Project in conformance with the Plans and Specifications on file with the DISTRICT.
5. Secure construction management and provide contract administration of the Creek and Bridge Project, including, inspection, surveying, geotechnical services, environmental monitoring during and within the limits of construction, and materials testing. Track costs for these items for Bridge and Creek portions of the project. DISTRICT shall participate in and approve of the selection of construction management team. In the event of a dispute, every effort will be made to resolve the dispute; however, the CITY's decision shall be final.
6. Provide to DISTRICT copy of any Request for Information (RFI) that affect DISTRICT owned facilities and pertain to either cost or design for review in a timely fashion. Work with the DISTRICT to assess options for potential change order items. Provide DISTRICT with copy of any Change Order negotiated for DISTRICT owned facilities.
7. Such staff and professional assistance as may be necessary in progress and construction of the Creek and Bridge Project, including professional construction management inspection and environmental services for the Creek and Bridge Project, and design support for the Bridge Project.
8. To not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of both parties and any attempt to assign or so transfer without such consent shall be void and without legal effect.

9. Upon recordation of a Notice of Completion, CITY will accept ownership and maintenance of those portions of the Creek and Bridge Project within the CITY's right-of-way, including water lines, sewer lines, surface improvements including bridge structures and channel transition walls, pavement, curb and gutter, street lighting, and landscaping and irrigation. No transfer of ownership of equipment or other property from CITY to DISTRICT shall occur as a result of this Agreement.
10. Assign to the DISTRICT, upon completion and acceptance of the Creek and Bridge Project, through a separate action, the permanent easement deeds related to the construction of Reach 1A-Phase 2as shown on the attached Exhibit 2, that were acquired for the Bridge Project.
11. To provide all services described above at no cost to the DISTRICT.

B. Services Provided by DISTRICT:

1. Provide such DISTRICT lands, rights of way and easements to the CITY necessary for constructing the Creek and Bridge Project.
2. Apply for and obtain the required State and Federal resource agency permits for construction of Reach 1A-Phase 2.
3. To provide written approval of that portion of the Bid received by CITY to be awarded for construction of Reach 1A-Phase 2. If costs for Reach 1A-Phase 2 are not acceptable to DISTRICT, DISTRICT reserves right to direct CITY to omit Reach 1A-Phase 2 from the award of the construction contract.
4. Such staff and professional assistance as may be necessary in the progress and construction of the Creek Project including design related consultation as needed.
5. To review RFI's and contract change orders for Construction of Reach 1A-Phase 2 in a timely manner. District has the final authority to review and approve, deny or amend any change order related to work on the District's portion of the Project, provided the District renders a decision in a timely manner, but in no event shall its final decision exceed 30 days. In the event District fails to render a final decision on a change order or review RFI's in a timely manner, or in excess of thirty (30) days, the City shall make the final decision for and on behalf of District, and District waives the right to challenge the decision. Notwithstanding the forgoing, any change order related to matters of imminent and immediate threat to the safety of persons or property shall be in the City's sole discretion to approve, deny, or amend, on

behalf of the District, and District waives the right to challenge the decision.

6. To not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of both parties and any attempt to assign or so transfer without such consent shall be void and without legal effect.
7. No transfer of ownership of equipment or other property from DISTRICT to CITY shall occur as a result of this Agreement.
8. Upon completion and acceptance of the Creek and Bridge Project the DISTRICT shall accept the permanent easement deeds assigned to the DISTRICT by the CITY, related to the Reach 1A-Phase 2 as shown on Exhibit 2 that were acquired for the Bridge Project.
9. To provide all services described above at no cost to the CITY unless stated otherwise.

SECTION 2. REIMBURSEMENT AND ACCOUNTING

Notwithstanding the above services which are provided by CITY and DISTRICT at their own respective expenses, DISTRICT shall be responsible for reimbursing CITY for money expended by the CITY for the DISTRICT's share of the construction cost related to the Creek and Bridge Project, Reach 1A-Phase 2. Construction cost as defined herein shall refer to the final actual construction contract amount for the Creek and Bridge Project on the bid schedule and on approved change orders. The respective scope (i.e. Reach 1A-Phase 2) of DISTRICT responsibility is shown in Exhibit 1.

CITY shall provide to DISTRICT an itemized account of all applicable DISTRICT construction cost expenses incurred by the CITY. CITY will credit DISTRICT account for any amounts agreed upon as credits. CITY shall submit invoices to DISTRICT no more often than once per month. DISTRICT shall pay the amount of such invoices within forty five (45) days of receipt.

SECTION 3. OWNERSHIP AND MAINTENANCE

Notwithstanding the division of costs and expenses, or the provision of easements and rights of way by CITY and DISTRICT, ownership and maintenance responsibility for the Project shall be as follows:

- A. DISTRICT will own and maintain the constructed creek channel and constructed channel walls built as part of Reach 1A-Phase 2.
- B. CITY will own and maintain the bridges, drop inlets, connector pipes, and irrigation and landscaping in the CITY right-of-way.

SECTION 4. PROVISIONS FOR CONTRACTOR'S SERVICES

Contracts for services of independent contractors and consultants for work required as part of a preliminary cost shall require:

- A. Prudent provisions for, and limits of, Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance, naming both the District and the City as additional insureds;
- B. Workers' Compensation, Professional Liability Insurance and Employer's Liability Insurance, as required by law, to cover all employees while performing any work incidental to the services required, naming both the District and the City as additional insureds, where applicable;
- C. Prohibition of unlawful discrimination in employment practices in observance of the provisions of the California Labor Code; and,
- D. Requirement that a City business tax certificate be maintained through the term of agreements for those services to be performed within the City of Santa Barbara.

SECTION 5. RECORDS AND STATEMENTS

The CITY shall tender itemized invoices of applicable project expenses, upon standard forms, to the County Public Works Director. Parties shall keep records concerning payment items on a generally recognized period of 4 years following the completion of the work assigned. Such records shall be made available for copying, inspection or audit by employees or independent agents or either party during reasonable business hours.

SECTION 6. INDEMNITY AND DISCLAIMER

Neither 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 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.

If hazardous material regulated by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"; 42 U.S.C. Sections 9601-9675), is discovered to exist in, on, or under easements deeded by the CITY to the DISTRICT as shown on the attached Exhibit 2, CITY shall be responsible for the costs of remediation, removal, transport and disposal of said hazardous material. Furthermore, CITY shall defend, indemnify, save, and hold harmless DISTRICT, its agents, employees, officers, successors, and assigns from any and all claims, liabilities, demands, costs (including reasonable attorney fees), and causes of action of all kinds with regard to the condition of the easement property which is a subject of this Agreement, especially contamination by harmful, hazardous and/or toxic materials, if any.

SECTION 7. AMENDMENT

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

SECTION 8. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To DISTRICT: Thomas D. Fayram, Deputy Director of Public Works
 Santa Barbara County Flood Control District
 130 E. Victoria Street, Suite 200
 Santa Barbara, CA 93101

To CITY: Pat Kelly, City Engineer
 City of Santa Barbara
 130 Garden Street
 Santa Barbara, CA 93101

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

SECTION 9. AUTHORITY

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.

SECTION 10. TERMINATION

A. By DISTRICT.

1. For Convenience. DISTRICT may terminate this Agreement any time prior to the Notice to Proceed for the Creek and Bridge Project.
2. For Cause. Should CITY default in the performance of this Agreement or materially breach any of its provisions, DISTRICT may, at DISTRICT's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CITY.

B. By CITY. CITY may, by written notice to DISTRICT, terminate this Agreement in whole or in part, whether for CITY's convenience or because of the failure of DISTRICT to fulfill the obligations herein.

1. For Convenience. CITY may terminate this Agreement any time prior to the Notice to Proceed for Creek and Bridge Project.
2. For Cause. Should DISTRICT default in the performance of this Agreement or materially breach any of its provisions, CITY may, at CITY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by DISTRICT. Should DISTRICT fail to pay CITY as required in Section 2, CITY may, at CITY's option terminate this agreement if such failure is not remedied by DISTRICT within thirty (30) days of written notice to DISTRICT of such late payment. Upon termination, District shall pay City for services performed to the date of termination.

SECTION 11. APPLICABLE LAW

This agreement shall be subject to the Charter, laws, rules and regulations in effect within the City of Santa Barbara, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction. If any provision of this agreement is 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.

SECTION 12. INTEGRATED AGREEMENT

This agreement constitutes the sole and entire agreement between the CITY and DISTRICT with respect to the subject matter hereof. The agreement correctly sets forth the obligations of the CITY and DISTRICT hereto each other as of the date of this agreement. All agreements or representations respecting the subject matter of this agreement not expressly set forth or referred to in this agreement are null and void.

The following exhibits are incorporated by reference in this agreement:

Exhibit 1: Map of Limits of Construction and Construction Cost Responsibility for Reach 1A Phase 2 and the Mason Street Bridge Replacement Project

Exhibit 2: City Fee Acquisition, Easement Rights to be Assigned to Flood Control

(signatures appear on following page)

LOWER MISSION CREEK FLOOD CONTROL PROJECT
REACH 1A - PHASE 2 CONSTRUCTION

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

CITY OF SANTA BARBARA

SANTA BARBARA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT



Rebecca Bjork
PUBLIC WORKS DIRECTOR

APPROVED AS TO CONTENT:

ATTEST:

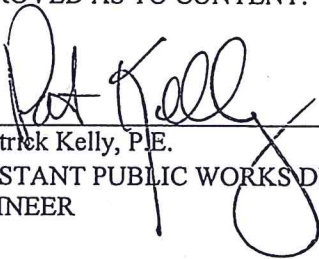
Scott D. McGolpin, P.E.
PUBLIC WORKS DIRECTOR



Gwen Peirce, CMC
CITY CLERK SERVICES MANAGER

APPROVED AS TO FORM:
Dennis A. Marshall
COUNTY COUNSEL

APPROVED AS TO CONTENT:



R. Patrick Kelly, P.E.
ASSISTANT PUBLIC WORKS DIRECTOR/CITY
ENGINEER

By: _____
Deputy

APPROVED AS TO ACCOUNTING FORM:
Robert W. Geis, C.F.A.
AUDITOR-CONTROLLER

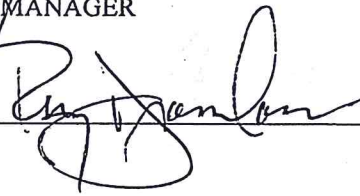
APPROVED AS TO FORM:
Ariel Pierre Calonne
CITY ATTORNEY



Tava Ostrenger, Deputy City Attorney

By: _____
Deputy

APPROVED AS TO FORM:
Ray Aromatorio, A.R.M., A.I.C.
RISK MANAGER

By: 

LOWER MISSION CREEK FLOOD CONTROL PROJECT
REACH 1A – PHASE 2 CONSTRUCTION

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

**SANTA BARBARA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT**

By: _____
Deputy Clerk

By: _____
Chair, Board of Directors

Date _____


RECOMMENDED FOR APPROVAL:

Santa Barbara County Flood Control &
Water Conservation District

**APPROVED AS TO ACCOUNTING
FORM:**

Robert W. Geis, CPA
Auditor-Controller

By: 
for Scott D. McGolpin
Public Works Director

By: 
Deputy

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 
Deputy County Counsel

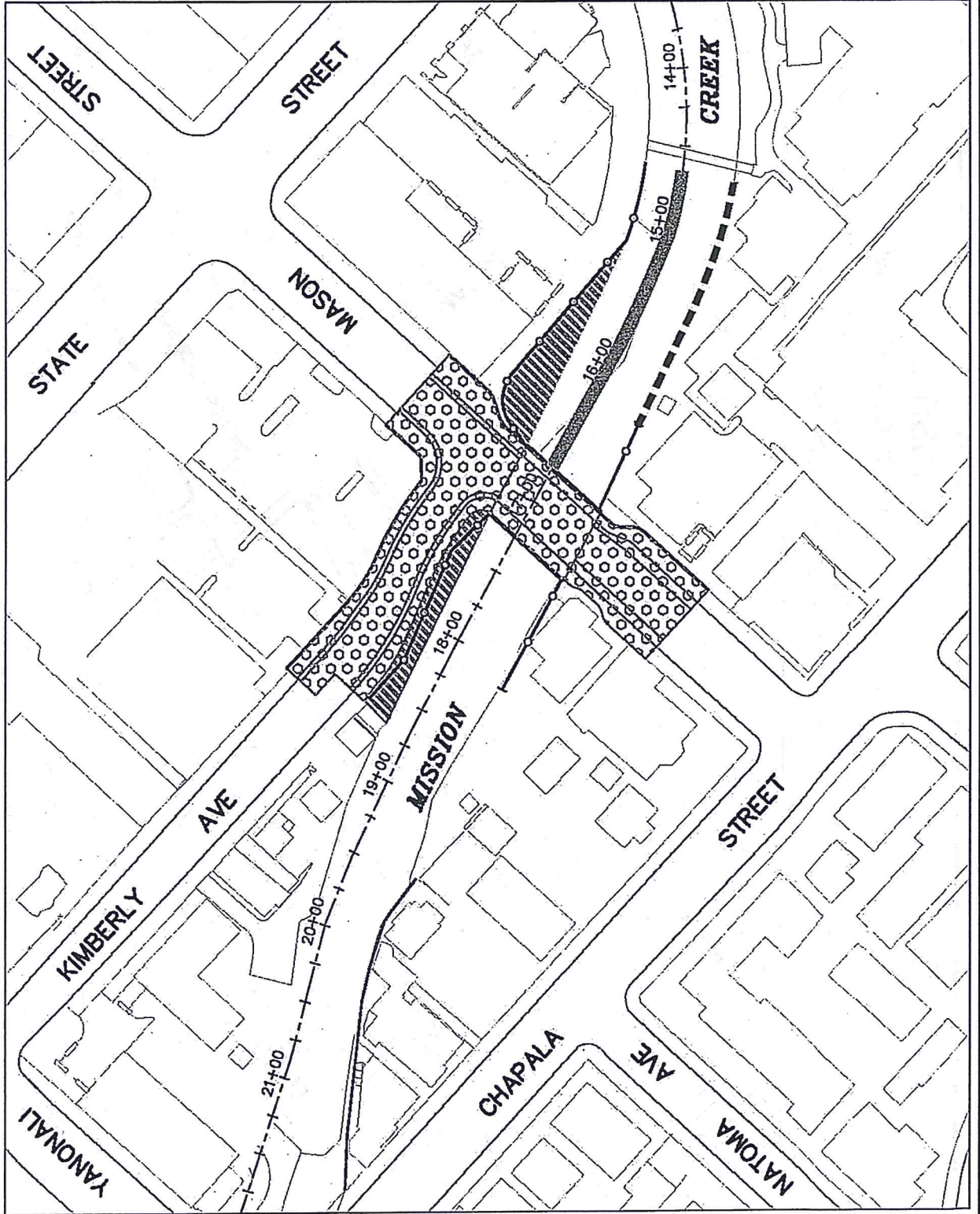
APPROVED AS TO FORM:

Ray Aromatorio, ARM, AIC
Risk Manager

By: 
Risk Management

EXHIBIT 1 LIMITS OF CONSTRUCTION

LOWER MISSION CREEK FLOOD CONTROL PROJECT REACH 1A-PHASE 2 AND
MASON STREET BRIDGE REPLACEMENT PROJECT



LEGEND

- Creek Control Line
 - 14+00 Creek Stationing
 - Building
 - Habitat Expansion Zones
- Construction Projects:**
- Mason Street Bridge Replacement Project
 - Lower Mission Creek Flood Control Project Reach 1A-Phase 2
 - Existing Channel Walls to be Protected in Place
- Channel Walls and Channel Constructed by CITY:**
- Eligible for Mason Street Bridge Replacement Project Federal HBP Funds (participating, no Flood Control reimbursement to City)
 - Non-Eligible for Mason Street Bridge Replacement Project Federal HBP Funds (non-participating, subject to Flood Control reimbursement to City)



NOT TO SCALE

EXHIBIT 2

MAP OF CONSTRUCTION COST RESPONSIBILITY
LOWER MISSION CREEK FLOOD CONTROL PROJECT REACH 1A-PHASE 2 AND
MASON STREET BRIDGE REPLACEMENT PROJECT

