

**AGREEMENT BETWEEN THE
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT
AND [CONTRACTOR]**

This Agreement is entered into by and between the San Mateo County Flood and Sea Level Rise Resiliency District, an independent special district ("District"), and [ENTER NAME OF CONTRACTOR] ("Contractor") (together, the "Parties") effective [ENTER DATE].

Recitals

Pursuant to the San Mateo County Flood Control District Act, as amended in 2019 by Assembly Bill 825, District may contract with independent contractors for the furnishing of services to or for District; and it is necessary and desirable that Contractor be retained for the purpose of [DESCRIBE SERVICES FURNISHED].

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Exhibits.** The following exhibits are attached to this Agreement and incorporated by this reference:

- Exhibit A—Scope of Services
- Exhibit B—Payments and Rates
- Exhibit C—Schedule

2. **Services.** In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for District in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A. No work for any task within Exhibit A by Contractor shall commence or be billable to District without prior written authorization by District.

3. **Payments.** In consideration of the services provided by Contractor in accordance with all terms set forth in this Agreement and in Exhibit A, District shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. District reserves the right to withhold payment if District determines that the quantity or quality of the work performed is unacceptable. In no event shall District's total fiscal obligation under this Agreement exceed [WRITE OUT AMOUNT] (\$[ENTER DOLLAR AMOUNT]). In the event that District makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by District at the time of contract termination or expiration. Contractor is not entitled to payment for services not performed as required by this Agreement.

4. **Term.** Subject to compliance with all terms and conditions, the term of this Agreement shall be from [ENTER TERM].

5. **Time of Performance.** The services shall be performed on a timely, regular basis in accordance with the Schedule set forth in Exhibit C.

6. **Standard of Care.** As a material inducement to District to enter into this Agreement, Contractor hereby represents that it has the qualifications and experience necessary to undertake the services to be provided pursuant to this Agreement, and will perform the services to a standard of reasonable professional care, for similar services on similar projects of like size and nature performed.

7. **Standard of Performance.** Contractor shall perform all work under this Agreement to all recognized applicable professional standards and pursuant to the above stated Standard of Care. Contractor hereby

represents and covenants that it shall follow the professional standards used by a competent practitioner in performing all services required hereunder.

8. Termination.

(a) This Agreement may be terminated by Contractor or by District at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the services actually completed to the services required by the Agreement.

(b) District may terminate this Agreement or a portion of the services referenced in the Exhibits based upon the unavailability of Federal, State, or other outside funds by providing written notice to Contractor as soon as is reasonably possible after District learns of said unavailability of outside funding.

(c) District may also terminate this Agreement for cause, which is separate from the ability to terminate without cause as described above. In order to terminate for cause, District must first give Contractor notice of the alleged breach. Contractor shall then have 10 calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, District may immediately terminate this Agreement without further action. In the event that District provides notice of an alleged breach pursuant to this section, District may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. District has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and District shall use reasonable judgment in making that determination.

9. Suspension. District may, in writing, order Contractor to suspend all or any part of the Contractor's services under this Agreement for the convenience of District or for work stoppages beyond the control of District or Contractor. Subject to the provisions of this Agreement relating to termination, a suspension of the work does not void this Agreement. In the event that work is suspended for a period exceeding 120 days, the schedule and cost for completion of the work will be adjusted by mutual consent of the Parties.

10. Contract Materials. Upon expiration or termination of this Agreement, all finished or unfinished work products, documents, data, studies, maps, photographs, and other materials and efforts conducted by Contractor under this Agreement shall become the property of District and shall be promptly delivered to District.

11. Relationship of Parties. Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of District and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of District employees.

12. Hold Harmless. Contractor shall indemnify and hold harmless District and its officers, agents, employees, and servants from and against any and all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for or on account of: (a) injuries to or death of any person, including Contractor or its employees/officers/agents; (b) damage to any property of any kind whatsoever and to whomsoever belonging; and/or (c) any other loss or cost, including, without limitation, that caused by the concurrent active or passive negligence of District and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and hold harmless under this section shall not apply to injuries or damage for which District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty

of Contractor to indemnify and hold harmless as set forth by this section shall continue after termination of the Agreement and shall include the duty to defend as set forth in Civil Code Section 2778.

13. Assignability and Subcontracting. Contractor shall not assign this Agreement nor any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of District. Any such assignment or subcontract without District's prior written consent shall give District the right to automatically and immediately terminate this Agreement without penalty or advance notice.

14. Payment of Permits/Licenses. Contractor bears responsibility to obtain any license, permit, or approval required from any agency for services to be performed under this Agreement at Contractor's own expense prior to commencement of said services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

15. Insurance.

(a) Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by District. Contractor shall furnish District with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to District of any pending change in the limits of liability or of any cancellation or modification of the policy.

(b) During the term of this Agreement, Contractor shall have in effect workers' compensation and employer's liability insurance providing full statutory coverage, as required by Section 1861 and Section 3700 of the California Labor Code.

(c) During the term of this Agreement, Contractor shall take out and maintain such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Comprehensive General Liability..... \$2,000,000

Motor Vehicle Liability Insurance..... \$1,000,000

Professional Liability..... \$1,000,000

District and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (i) the insurance afforded thereby to District and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (ii) if District or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

(d) In the event of the breach of any provision of this section, including receipt of a notice indicating required insurance coverage will be diminished or cancelled, notwithstanding any other provision of this Agreement to the contrary, District may immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

16. Compliance With Laws.

(a) All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable laws, ordinances, and regulations, including, without limitation: the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder; the Americans with Disabilities Act of 1990, as amended, and the nondiscrimination requirements of 41 C.F.R. 60-741.5(a); if applicable, Section 504 of the Rehabilitation Act of 1973; and all other applicable Federal, State, and/or local laws prohibiting discrimination on the basis of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information; all applicable equal opportunity laws and requirements; and all applicable equal benefits laws and requirements, including, without limitation, laws prohibiting discrimination in the provision of equal benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

(b) All services to be performed by Contractor under this Agreement shall also be performed in accordance with all applicable laws, ordinances and regulations, including, without limitation, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

(c) Contractor shall timely and accurately complete, sign, and submit all necessary documentation evidencing compliance with the requirements of this section. In addition, Contractor certifies that no finding of discrimination has been issued against Contractor in the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any such finding(s) of discrimination have been issued against Contractor within the past 365 days, Contractor shall provide District with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Contractor shall also report to District Chief Executive Officer (CEO) the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this section within 30 days of such filing, unless the complaint or allegation is dismissed within such 30 days. The report shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

(d) Violation of and/or failure to comply with the provisions of this section shall be considered a material breach of the Agreement, subjecting the Agreement to immediate termination at the sole option of District and subjecting Contractor to penalties, disqualification from being considered for or being awarded a District contract for up to 3 years, and/or other sanctions.

17. Retention of Records; Right to Monitor and Audit.

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after District makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by a Federal grantor agency, the State and/or District.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by all applicable Federal, State, and local agencies and as required by District.

(c) Contractor agrees upon reasonable notice to provide to District or its authorized representative, to any Federal or State department having monitoring or review authority, and/or to any of their respective

audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

18. Merger Clause; Amendments. This Agreement, including all Exhibits and other attachments incorporated by reference, constitutes the sole Agreement of the Parties and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or other attachment, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the Parties not expressly stated in this Agreement are not binding. All subsequent modifications or amendments of the Agreement shall be in writing and signed by the Parties.

19. Controlling Law; Venue. The validity of this Agreement and of its terms, the rights and duties of the Parties, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

20. Notices. Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (a) transmitted via email to the email address listed below; and (b) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of District, to:

Name/Title: Chief Executive Officer or Authorized Representative
Address: 1700 South El Camino Real, Suite 502, San Mateo, CA 94402
Telephone: 650-844-8310
Email: XXXX@OneShoreline.org

In the case of Contractor, to:

Name/Title: [insert]
Address: [insert]
Telephone: [insert]
Email: [insert]

21. Confidentiality. Contractor, in the course of its duties, may have access to financial, accounting, statistical, and personal data of private individuals and employees of District. Contractor covenants that all such confidential data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement shall not be disclosed by Contractor without written authorization by District. District shall grant such authorization if disclosure is required by law. Upon request, all District data shall be returned to District upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement. It is hereby agreed that the following information is not considered to be confidential under this Agreement:

- a. Information already in the public domain;
- b. Information disclosed to Contractor by a third party who is not under a confidentiality obligation;
- c. Information developed by or in the custody of Contractor before entering into this Agreement;
- d. Information developed by Contractor through its work with other clients; and

- e. Information required to be disclosed by law or regulation, including, but not limited to, the California Public Records Act or subpoena, court order, or administrative order.

22. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by District of any payment to Contractor constitute or be construed as a waiver by District of any breach of this Agreement, or any default which may then exist on the part of Contractor, and the making of any such payment by District shall in no way impair or prejudice any right or remedy available to District with regard to such breach or default.

23. Electronic Signatures. The Parties wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law.

24. Payment of Permits/Licenses. Contractor bears responsibility to obtain any license, permit, or approval required from any agency for services to be performed under this Agreement at Contractor's own expense prior to commencement of said services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

In witness of and in agreement with this Agreement's terms and conditions, the Parties, by their duly authorized representatives, affix their respective signatures:

For Contractor, [NAME OF CONTRACTOR]:

Contractor Signature

Contractor Name (Print)

Date

For District:

Len Materman
Chief Executive Officer

Date

Exhibit A – Scope of Services

In consideration of the payments set forth in Exhibit B, Contractor shall perform the services described below for District in accordance with the terms, conditions, and specifications set forth in this Agreement.

No work for any task within Exhibit A by Contractor shall commence or be billable to District without prior written authorization by District. Additional services outside of those described herein must be authorized by the District's representative in writing prior to the commencement of that work.

Exhibit B – Payments and Rates

In consideration of the Scope of Services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, District shall pay Contractor based on the following fee schedule and terms:

Under no circumstances shall the amount paid by District to Contractor exceed **\$(ENTER DOLLAR AMOUNT)**. Contractor shall provide District with a written itemized invoice that allows the District to reconcile the work performed. All invoices shall include the agreement number, project location, dates of services, and specified work completed.

Remit Invoices to:

San Mateo County Flood and Sea Level Rise Resiliency District

1700 South El Camino Real, Suite 502

San Mateo, CA 94402

Email: LDong@OneShoreline.org

Payment will be made within 45 days of invoice receipt.

Exhibit C – Schedule

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, Contractor shall perform services in accordance with the following schedule: