

**CITY OF SAN PABLO**  
**SUBAWARDEE AGREEMENT FOR CONSULTING SERVICES**  
Project No.0201/ Agreement No. 1

THIS AGREEMENT (“**Agreement**”), dated and effective this 22 day of September, 2020 (“**Effective Date**”), is by and between the City of San Pablo, a municipal corporation organized and existing under the laws of the State of California, (“**City**”), and The Watershed Project, a community-based environmental education non-profit organization, (“**Consultant**”) (individually, a “**Party**,” and collectively, the “**Parties**”).

**RECITALS**

WHEREAS, the City desires to engage a consultant to provide project video, interpretive signage and environmental education services to the City (“**Services**”) as further set forth in this Agreement;

WHEREAS, the City desires to engage a consultant who will act at all times in the City’s best interest and will respect the trust and confidence placed in that consultant by the City; and

WHEREAS, Consultant has represented to City that Consultant has the special training, skill, competence and expertise necessary to provide the Services needed by the City; desires to enter into this Agreement with the City as an independent contractor; and is willing to provide the Services on the following terms and conditions.

NOW, THEREFORE, Consultant and the City agree as follows:

**TERMS AND CONDITIONS**

**(1) Scope of Services.**

A. **Scope of Services.** Consultant agrees to provide the Services to the City as specified in, collectively, the scope of services set forth in the City of San Pablo’s grant agreement with the California Natural Resources Agency dated 1/25/2018 (**Exhibit A**) and further defined in the City’s email, dated 9/1/20, attached as **Exhibit B** and incorporated herein, and the scope of services set forth in Consultant’s proposal dated 9/14/20 (“**Proposal**”), attached as **Exhibit C** and incorporated herein. In the event of any conflict or inconsistency between any of the terms of the grant agreement, the email, the Proposal, and this Agreement, the terms most favorable to the City will prevail. Any services not encompassed in this Section (1) are additional services (“**Additional Services**”) subject to prior written authorization by the City, as further specified below in Section (3), “Additional Services.”

B. **Quality of Performance.** Consultant will provide the Services and any authorized Additional Services in accordance with the standards of its profession; in accordance with the terms, conditions, and objectives of this Agreement; and in a manner satisfactory to the City Manager or his or her authorized delegee (“**City Manager**”). Consultant represents that it possesses the necessary skills, background, and licenses to perform the Services or Additional Services. Consultant is solely responsible for the quality and suitability of the Services it provides pursuant to this Agreement. If, during the course of this Agreement, the City Manager notifies Consultant that the Services are not satisfactory, in whole or in part, Consultant will promptly take the corrective action required by the City Manager, at no extra cost to the City. Failure to promptly take such corrective action constitutes a material breach of this Agreement and cause for

termination in the City's discretion. This standard of care will not be construed to impose a mandatory duty on the City within the meaning of Government Code section 815.6. The City's acceptance of Services performed under this Agreement will not operate to waive or release Consultant's obligation under this paragraph.

C. **COVID-19 Pandemic.** All City of San Pablo programs and services must be in compliance with current health orders issued by Contra Costa County Health Services at: <https://www.coronavirus.cchealth.org/health-orders>; including but not limited to social distancing requirements: <https://cchealth.org/coronavirus/pdf/2020-0331-Appendix-A-Social-Distancing-Protocol.pdf>. Consultant shall comply with these requirements and contact City staff immediately if there is any issue with compliance.

C. **Time is of the Essence.** In the performance of this Agreement, time is of the essence. Consultant must be available to begin providing the Services upon the Effective Date of this Agreement, and must complete the Services within the time specified in Section (4), "Effective Date and Term."

D. **Primary Service Provider.** The City has approved of The Watershed Project as Consultant's primary provider of the Services under this Agreement, and no other person will be accepted as the primary provider of the Services without the City's prior written consent.

E. **Prevailing Wages.** Should the scope of services fall under the requirements of the California Labor Code and implementing regulations for the payment of State's General Prevailing Wage rates, then Consultant shall comply and pay prevailing wages. For additional information, see <http://www.dir.ca.gov>.

**(2) Compensation.** As full compensation for the satisfactory and timely performance of the Services as specified in Section (1), "Scope of Services," and the attached exhibits, City hereby agrees to pay Consultant a sum not to exceed **Thirty Thousand Dollars (\$30,000)** as follows:

Consultant will be paid all undisputed amounts within thirty (30) days of City's receipt of detailed invoices for Services provided to the City Manager's satisfaction during the preceding calendar month. Invoices must include all of the information contained in Section (7), "Billings," below. Each invoice must be signed by an authorized representative of Consultant, verifying that the invoiced Services have been performed. Consultant will not be entitled to compensation for Additional Services, as defined below in Section (3), unless authorized by City in writing in advance, and memorialized in an amendment to this Agreement executed by the authorized representatives of each Party. This Section (2) supersedes any conflicting or inconsistent provisions in the Proposal.

**(3) Additional Services.** In addition to the Services included in Section (1), "Scope of Services," the Parties may from time to time agree that Consultant will provide Additional Services for additional compensation, as authorized by the City Manager. The nature and scope of the Additional Services, including the time for performance and terms for mutually agreeable additional compensation must be memorialized in a writing, executed by both Parties, as further specified in Section (25), "Amendments," before Consultant may begin providing the Additional Services. Consultant will not be entitled to compensation for any Additional Services performed without a written amendment to include the Additional Services in this Agreement. If Consultant believes that services that it is directed to perform by City are not included in Section (1), "Scope of Services," Consultant will promptly notify the City in writing of the basis for this belief. If the City agrees that the subject services are not included in Section (1), "Scope of Services," the Parties

will promptly execute a writing to authorize the services as Additional Services for mutually agreed-upon additional compensation. Except as otherwise specified in the written authorization, all Additional Services are subject to the same terms and conditions as all Services under this Agreement, including, billing, record-keeping, reporting, insurance, indemnity, and compliance with all applicable laws and standards.

(4) **Effective Date and Term**. The term of this Agreement (“**Term**”) begins on the Effective Date set forth above, and expires on **June 30, 2021**. If the Term expires later than the end of the City’s fiscal year, the continuation of the Term into the next fiscal year will be contingent upon the City’s lawful encumbrance or appropriation of new funds for the Agreement.

(5) **Assignment and Subcontracting**. A substantial inducement to City for entering into this Agreement was, and is, the reputation and competence of Consultant. The assignment or subcontracting of this Agreement by Consultant, or any interest therein, is prohibited without the prior written approval of the City Manager. The City has authorized Consultant to use the following Subconsultants/Subcontractors as specified:

<u>Subconsultant/Subcontractor Name</u>	<u>Subconsultant/Subcontractor Services</u>
N/A	N/A

(6) **Independent Contractor Status**. It is expressly understood and agreed by the Parties that Consultant, while providing Services pursuant to this Agreement, is an independent contractor and not an employee of the City. Consultant is solely responsible for the means and methods by which it provides the Services. Consultant is solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Consultant is solely responsible for its own acts and those of its agents and employees during the Term of this Agreement. Consultant will not represent, at any time or in any manner, that Consultant is an employee of the City. Consultant will exercise its judgment in recommending to City the methods by which to accomplish City’s objectives and needs. Consultant acknowledges that the City will provide no training. Consultant will provide whatever tools and materials that are necessary to complete a client engagement. Consultant is free to accept, and has accepted in the past, other client engagements. Consultant is responsible for purchasing, bringing, providing, and controlling any and all equipment, tools, instruments, etc. needed for completion of the Services set forth herein, as well as for maintenance and use of such equipment. It is understood that Consultant is hired on a temporary basis only, and that if the City and/or Consultant desires to continue Consultant’s services after expiration of the Term or termination of this Agreement, Consultant must enter into a new agreement.

(7) **Billings**. Consultant's invoices must include the following information: (a) a brief description of Services performed, including any Additional Services; (b) the date the Services were performed; (c) the number of hours spent and by whom; (d) the current Agreement not-to-exceed amount; (e) the amount previously billed; (f) the total paid to date; (g) the outstanding balance due, if any; (h) the current invoice amount; (i) total amount billed against the Agreement to date; (j) the remaining balance of the not-to-exceed amount; and (k) the Consultant’s signature. Except as specifically authorized by City, Consultant will not bill City for duplicate Services performed by more than one person. Consultant may not submit any billing for an amount in excess of the maximum amount of compensation authorized in Sections (2) and (3), above. Consultant is solely responsible for its office and overhead costs, including furniture and

equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by Consultant in the performance of this Agreement.

**(8) Advice and Status Reporting.** Consultant will provide the City with timely reports, orally or in writing, of all significant developments arising during performance of its Services, and provide the City with information as is necessary to enable City to monitor the performance of this Agreement, including statements and data demonstrating the effectiveness of the Services provided in achieving the City's express goals and objectives. The City may withhold payments otherwise due to Consultant pending timely delivery of all such reports and information. Consultant will promptly notify the City Manager of any matters that could adversely affect Consultant's ability or eligibility to continue to provide Services under this Agreement.

**(9) Retention of Records.** Consultant's complete files, including all records, employee time sheets, and correspondence pertaining to the Services will be available for review by the City upon request, and copies of pertinent reports and correspondence will be furnished for the City's files upon request by the City. Consultant will maintain adequate documentation to substantiate all charges for hours and materials charged to City under this Agreement. Consultant will maintain the records and any other records related to the Services or this Agreement and will allow City access to such records for a period of four years after the expiration of the Term or termination of the Agreement. At City's request, or upon expiration or termination of this Agreement, Consultant will return to City all plans, maps, cost estimates, project financial records, reports, and related documents. All research information, plans, diagrams, financial records, reports, cost estimates or other documents prepared or obtained under the terms of this Agreement will be delivered to and become the property of the City and all data prepared or obtained under this Agreement will be made available, upon request, to the City without restrictions or limitations on their use. This Section (8) will survive expiration of the Term or termination of the Agreement.

**(10) Written Reports and Documents.** In accordance with Government Code section 7550, if the total compensation paid to Consultant under this Agreement exceeds \$5,000, any document or written report prepared by Consultant for or under the direction of City will contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report. The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report. When multiple documents or reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or reports.

**(11) Record and Fiscal Control System.** Consultant will maintain its financial records and fiscal control systems in a commercially reasonable manner. Consultant will maintain personnel and payroll records to adequately identify the source and application of all received funds; withhold income taxes; pay employment taxes (including Social Security), unemployment compensation, worker's compensation and other taxes as may be due. Consultant will maintain an effective system of internal control to assure that funds provided through the City are used solely for authorized purposes.

**(12) Access to Records; Audits.** The City will have access at any time during normal business hours and as often as necessary to any bank account and books, records, documents, accounts, files, reports, and other property and papers of Consultant relating to the Services to be provided under this Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.

(13) **Consultant's Testimony.** Unless the Services include serving as an expert witness, Consultant agrees to consult with City and testify at City's request at no additional cost other than normal witness fees if litigation is brought against City in connection with Consultant's Services. This Section (12) will survive expiration of the Term or termination of the Agreement.

(14) **Assignment of Personnel.** Consultant will only assign competent and qualified personnel to perform the Services. If City asks Consultant to remove a person assigned to the Services, Consultant agrees to do so immediately regardless of the reason, or the lack of a reason, for City's request.

(15) **Insurance.** Before it may begin performing Services under this Agreement, Consultant must procure and provide proof of the insurance coverage and endorsements required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Consultant and its subconsultants or subcontractors relating to or arising from the performance of the Services, and must remain in full force and effect at all times during the Term of the Agreement. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better. If Consultant fails to provide any of the required coverage in full compliance with the requirements of this Agreement, City may, at its sole discretion and in addition to any other remedies, purchase such coverage at Consultant's expense and deduct the cost from payments due to Consultant, suspend performance of the Services under the Agreement, or terminate Consultant for default. The procurement of the required insurance will not be construed to limit Consultant's liability under this Agreement or to fulfill Consultant's indemnification obligations under this Agreement. If coverage limits carried by Consultant exceed the minimum limits specified below, the higher limits will be deemed to be required by this Agreement.

A. **Policies and Limits.** Consultant must procure and maintain the following insurance policies and limits at all times during the Term of this Agreement:

1. **Commercial General Liability Insurance ("CGL"):** The CGL policy must be issued on an occurrence basis, written on a comprehensive general liability form (CG 00 01), and must include coverage for liability arising from the operations of Consultant or its subconsultants or subcontractors in the performance of the Services, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least \$2,000,000.00 per occurrence. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.
2. **Automobile Liability:** The automobile liability policy must provide coverage of at least \$1,000,000.00 combined single-limit per accident for bodily injury, death or property damage.
3. **Workers' Compensation Insurance and Employer's Liability:** The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, providing coverage of at least \$1,000,000.00, or as otherwise required by law.
4. **Professional Liability:** The professional liability insurance policy must insure

against the Consultant's errors and omissions in the provision of Services under this Agreement, in an amount not less than \$1,000,000.00 combined single limit. Any deductible or self-insured retention may not exceed \$50,000. The professional liability policy must include prior acts coverage sufficient to cover all Services provided by the Consultant for this Agreement, and the coverage must continue in effect for five years following final payment to Consultant. The following provisions apply if the professional liability policy is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be on or before the Effective Date of the Agreement.
- b. The insurance must be maintained and evidence of insurance must be provided for a continuous period of at least five years following expiration of the Term or termination of the Agreement, whichever occurs first.
- c. If the coverage is canceled or not renewed and is not replaced with another claims-made policy form with a retroactive date that is on or before the Effective Date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years following expiration of the Term or termination of the Agreement, whichever occurs first. The City has the right to procure, at Consultant's cost, any extended reporting provisions of the policy if the Consultant cancels or fails to renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City before Consultant may begin performing Services under this Agreement.

**B. Required Endorsements.** The insurance provided by Consultant must include the following endorsements as specified below. The endorsements must be executed by a person authorized to bind the issuing insurer. The endorsements are to be provided on forms provided, specified, or approved by the City. As an alternative to the City's forms, the Consultant's insurer(s) may provide complete copies of all required insurance policies, including endorsements.

1. **Additional Insured Endorsements:** The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
  - a. The City, its officers, officials, employees, and volunteers ("**Additional Insureds**") will be covered as additional insureds with respect to all covered liability. This must be provided in the form of an additional insured endorsement to the Consultant's insurance policy, using form CG 20 10 11 85, forms CG 20 10 10 01 and GC 20 37 10 01, or equivalent approved by the City. For design professionals form CG 20 07 may be used. Alternatively, the additional insured endorsement may be provided as a separate owner's policy that complies with all of the requirements set forth in this Section 15.
  - b. The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the policies will apply as though separate policies have been issued to each of the Additional Insureds.

- c. The insurance provided by the Consultant is primary and no insurance or self-insurance held or owned by any of the Additional Insureds may be called upon to contribute to a loss or defense.
  - d. Any failure by Consultant to comply with the reporting requirements for a policy will not affect nor abridge the coverage provided for any Additional Insureds.
  - e. The coverage or endorsement will not contain any limitations on the scope of protection available to the Additional Insureds.
2. **Notice:** Each insurance policy required by this clause must provide or be endorsed to state that coverage will not be reduced, canceled, or allowed to expire without at least 30 days written notice to the City, unless due to non-payment of premiums, in which case 10 days written notice is required.
3. **Waiver of Subrogation:** Each required policy must include an endorsement providing that the insurer will waive any right of subrogation it may have against the City. Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss.

C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions for the required insurance policies are subject to prior approval by the City Manager. Before beginning performance of the Services, Consultant must disclose the amounts of the deductibles and self-insured retentions that apply to the required policies. If the City Manager determines that the deductible or self-insured retention for any required policy is unacceptably high, at the option of City, (1) the insurer must reduce or eliminate the deductible or self-insured retention with respect to the Additional Insureds, or (2) the Consultant must provide a bond or financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. During the Term of this Agreement, Consultant may not increase any deductibles or self-insured retentions with respect to the Additional Insureds, without the prior written consent of the City Manager. The City Manager may condition such consent upon the Consultant procuring a bond or financial guarantee that is satisfactory in form to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. **Subconsultants or Subcontractors.** Consultant must ensure that each subconsultant or subcontractor is required to maintain the same insurance coverage required for Consultant under this Section (15), with respect to its performance of Services, including the required endorsements. Consultant must confirm that each subconsultant or subcontractor has complied with these insurance requirements before the subconsultant or subcontractor is permitted to begin Services under this Agreement. Upon request by the City, Consultant must provide certificates and endorsements submitted by each subconsultant or subcontractor to prove compliance with this requirement. The insurance requirements for subconsultants or subcontractors do not replace or limit the Consultant insurance obligations.

**(16) Indemnification.** The terms and conditions set forth in subsection 16(A), below, are applicable to this Agreement if the Services to be provided by Consultant are not “design professional” services as used and defined in Civil Code section 2782.8 (architect, landscape architect, engineering, or land surveyor services). The terms and conditions set forth in subsection 16(B), below, are applicable to this Agreement if the Services to be provided by Consultant are

“design professional” services as used and defined in Civil Code section 2782.8 (architect, landscape architect, engineering, or land surveyor services).

A. **Indemnification by Non-Design Professionals.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the City) and hold harmless City, and its employees, officials, volunteers and agents ("**Indemnified Parties**") from and against any and all losses, claims, damages, costs and liability of every nature arising out of or resulting from the performance of this Agreement by Consultant, its officers, employees, agents, volunteers, subcontractors or sub-consultants, excepting only liability arising from the sole negligence, active negligence or willful misconduct of City. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

1. The duty to defend is a separate and distinct obligation from the Consultant's duty to indemnify. The Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon tender to the Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

2. In the event that Consultant or any employee, agent, subconsultant or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("**PERS**") to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, subconsultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

3. The review, acceptance or approval of the Consultant's Services or work product by any Indemnified Party shall not affect, relieve or reduce the Consultant's indemnification or defense obligations. The provisions of this Section are not limited by and do not affect the provisions of this Agreement relating to insurance.

4. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

5. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

**B. Indemnification by Design Professionals.** Consistent with California Civil Code section 2782.8 (“**section 2782.8**”), when the Services to be provided under this Agreement are to be performed by a “design professional,” as that term is defined under section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, defend and hold harmless City, and its employees, officials, volunteers and agents (“**Indemnified Parties**”) from and against any and all losses, claims, damages, costs and liability of every nature, including reasonable attorneys’ fees and costs, to the extent caused in whole or in part by any negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, subconsultants or subcontractors in performance of the Services under this Agreement, but excluding the sole or active negligence or willful misconduct of one or more of the Indemnified Parties. Defense costs shall not exceed Consultant’s proportionate percentage of fault, except as set forth in section 2782.8.

1. In the event that Consultant or any employee, agent, subconsultant or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (“**PERS**”) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, subconsultants or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

2. The review, acceptance or approval of the Consultant’s Services or work product by any Indemnified Party shall not affect, relieve or reduce the Consultant’s indemnification or defense obligations. The provisions of this Section are not limited by and do not affect the provisions of this Agreement relating to insurance.

3. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

4. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

**(17) Licenses.** If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its employees, agents, or subcontractors by federal or state law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations. Consultant, its subconsultants, and subcontractors, will obtain and maintain a City of San Pablo Business License at all times during the Term of this Agreement.

**(18) Employment Practices.**

A. **Employment of Local Residents.** Pursuant to the San Pablo Economic Opportunity Policy, the Consultant and any subcontractors shall contact the San Pablo Economic Development Corporation (“**EDC**”) at [info@sanpabloedc.org](mailto:info@sanpabloedc.org) or 510-215-3200, at least ten business days prior to hiring or staffing for fulfillment of the Agreement, describing

number, duties and qualifications needed for available positions, and shall fairly consider for employment any workers referred by the EDC within three business days. **“Local Resident”** means an individual having an adjusted household income of less than the Area Median Income for Contra Costa County, and domiciled in the City of San Pablo as of the relevant hiring date, with “domiciled” as defined by Section 349(b) of the California Election Code. Discrimination against Local Residents on the basis of their local status is prohibited.

- B. **Compliance With Law.** Consultant represents that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment. Consultant shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (“**ADA**”) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing Services and providing services under this Agreement, Consultant shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders, and directions of their respective administrative agencies and the officers thereof.

(19) **Local Subcontracting – Outreach.** Consultant shall contact the EDC at [info@sanpabloedc.org](mailto:info@sanpabloedc.org) or 510-215-3200) at least two weeks prior to any subcontract award, providing notice and details regarding subcontracting opportunity. The EDC shall notify qualified local businesses of subcontracting opportunities, and provide technical assistance to qualified local businesses during the subcontracting bidding process.

(20) **Termination.**

A. City may terminate this Agreement at its sole discretion at any time prior to expiration of the Term or completion by the Consultant of the Services required hereunder. Notice of termination of this Agreement shall be given in writing to the Consultant, and shall be sufficient and complete when same is deposited in the United States Mail, postage prepaid and certified, address as set forth below in Section (21), “Notices.” The Agreement shall be terminated upon the date set forth in the City’s Notice of Termination. If the City terminates this Agreement, the Consultant shall be compensated for all Services satisfactorily performed prior to the time of receipt of cancellation notice, and shall be compensated for materials ordered by the Consultant or its employees, or services of others ordered by the Consultant or its employees, prior to receipt of notice of cancellation whether or not such materials or final instruments of service of others have actually been delivered, provided that the Consultant or its employees are not able to cancel such orders for materials or services of others. Compensation for the Consultant in the event of cancellation shall be determined by City in accordance with the percentage of Services completed and agreed to by the Consultant. In the event of cancellation, all notes, sketches, computations, drawings, and specifications or other data, whether complete or not, remain the property of the City. The City may make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

B. **Termination for Cause.** City may terminate this Agreement for cause by providing Consultant with one day’s written notice of such termination if Consultant violates any of the terms

and conditions of this Agreement. In City's discretion and at City's option, such termination for cause may alternatively be accomplished, where Consultant fails to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this Agreement, within seven days after receipt of the notice of such default. Upon City's termination of this Agreement for cause, City reserves the right to complete the Services by whatever means City deems expedient and the expense of completing such Services, as well as any and all damages to the extent caused by the negligent acts, intentional acts or errors or omissions of the Consultant, shall be charged to the Consultant.

C. Immediate Termination. City may terminate this Agreement immediately in any case where the Consultant engages in fraudulent or criminal activities while performing the Services, or is otherwise determined to lack the necessary skills to accomplish the desired objectives.

(21) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Consultant pursuant to this Agreement shall be the property of the City at the moment of their completed preparation. All materials and records of a preliminary nature such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

(22) Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the Parties to amend the terms and conditions of this Agreement.

(23) Abandonment by Consultant. In the event the Consultant ceases performing Services under this Agreement or otherwise abandons the Agreement prior to completing all of the Services, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this Agreement, and shall be paid for the reasonable value of the Services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment. Consultant agrees to be financially responsible and to compensate City for any costs incurred by City in retaining the services of another to replace Consultant, but only to the extent that the costs of retaining the replacement exceed what remaining amounts would have been paid to Consultant under the Agreement had Consultant completed the Services.

(24) Waiver. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

(25) No Third-Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

(26) Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this

Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

**(27) Compliance with Laws.** In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States, the State of California, and City ordinances. Consultant warrants that all Services done under this Agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

**(28) Controlling Law and Venue.** This Agreement and all matters relating to it shall be governed by the laws of the State of California, and venue for any legal action arising from or relating to this Agreement will be in the Superior Court of Contra Costa County, and no other place. Consultant hereby waives the removal provisions of Code of Civil Procedure section 394.

**(29) Breach.** In the event that Consultant fails to perform any of the Services described in this Agreement or otherwise breaches the Agreement, City shall have the right to pursue all remedies provided by law and equity. Neither payment by the City nor performance by Consultant shall be construed as a waiver of either Party's rights or remedies against the other. Failure to require full and timely performance of any provision, at any time, shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter. In the event of any suit, action or proceeding brought by either party for breach of any term hereof or to enforce any provision hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees.

**(30) Inspection by Other Agencies.** Authorized representatives of the Federal Government, the California Department of Transportation, or other government agencies which provide grant funding (if any) for this Agreement and the City may have the right to inspect Consultant's work product.

**(31) Conflict of Interest.** Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Gov. Code section 81000 et seq.) respecting this Agreement. Where City Manager determines, based on facts provided by City staff, that Consultant meets the criteria of section 18701 of the FPPC regulations, the individual providing services under this Agreement shall be considered a "designated employee" under the City's conflict of interest code, and shall be required to complete FPPC Form 700 regarding his or her economic interests in a timely manner.

**(32) Copyright.** Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright to work created pursuant to this Agreement. The issuance of a patent or copyright to Consultant or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this Agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the Effective Date unless extended by operation of law or otherwise.

(33) **Whole Agreement.** This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

(34) **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed but the parties agree that the Agreement on file in the office of the City Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document.

(35) **Notices.** Notices required by this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Consultant: Juliana Gonzalez, Executive Director  
1327 South 46th Street  
Building 155  
Richmond, CA 94804

To the City: City Manager  
1000 Gateway Avenue  
San Pablo, CA 94806

Each Party shall provide the other Party with telephone and written notice of any change in address as soon as practicable. Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(36) **Federal Funding Requirements (if applicable).** If this Agreement is subject to federal funding, in whole or in part, it must comply with the uniform federal award procurement requirements set forth in 2 CFR §§ 200.318 – 200.326, as may be amended from time to time, and contain the applicable provisions described in Appendix II to Part 200 – *Contract Provisions for non-Federal Entity Contracts Under Federal Awards*, which are attached to this Agreement as Exhibit C. In the event of a conflict or inconsistency between Exhibit C, Exhibit D, if applicable, and this Agreement, Exhibit C will control.

This Agreement is subject to federal funding. See Exhibit C.  
 This Agreement is not subject to federal funding.

(37) **Caltrans Funding Requirements (if applicable).** If this Agreement is for architectural and/or engineering services subject to reimbursement or funding, in whole or in part, by Caltrans and administered under the Local Assistance Procedures Manual (“LAPM”), it must include the provisions set forth in Exhibit D, *Mandatory Fiscal and Federal Provisions for Architectural and Engineering Consultant Contracts Subject to Caltrans Funding*. In the event of any conflict or inconsistency between Exhibit D and this Agreement, Exhibit D will control.

This Agreement is subject to funding by Caltrans. See Exhibit D.  
 This Agreement is not subject to funding by Caltrans.

IN WITNESS WHEREOF, Consultant has executed this Agreement, and the City, by its City Manager, who is authorized to do so, has executed this Agreement.

**APPROVED AS TO FORM:**

**CITY OF SAN PABLO**  
A Municipal Corporation

By \_\_\_\_\_  
Lynn Tracy Nerland, City Attorney

By \_\_\_\_\_  
Matt Rodriguez, City Manager

**The Watershed Project**

By \_\_\_\_\_  
Consultant, Juliana Gonzalez

**ATTEST:**

By \_\_\_\_\_  
Patricia Ponce, City Clerk

Dated \_\_\_\_\_

Attachments:     Exhibit A: CNRA Grant Agreement, dated 1/25/18  
                         Exhibit B: City of San Pablo Email, dated 9/1/20  
                         Exhibit C: Consultant's Proposal, dated 9/14/20

## Exhibit A

# Re: Wildcat Creek Video Ribbon Cutting Update

Amanda Booth

Tue 9/1/2020 12:14 PM

To: Juliana Gonzalez <juliana@thewatershedproject.org>;

Cc: Anne Bremer <anne@thewatershedproject.org>; Ronalyn Nonato <RonalynN@sanpabloca.gov>;

Hi Juliana,

Thank you for getting us the draft Scope of Work (SOW) so quickly. In general, the SOW looks good. Below are a few clarifying comments/aspects and some requested updates. Please provide an updated SOW and budget. While TWP is updating the SOW the City will work on draft contract documents for your approval. If any of these updates require a change in budget please let us know asap.

## Clarification on Video

- Below is the desired breakdown for the video content:
  - **Intro and project background (30 seconds)**- This part will introduce the project and talk about how the concept was identified from the community and the Watershed Council. We are thinking that Adele would be a good person to talk about this section; City staff will reach out and ask her if she is interested/willing to be involved.
  - **Design/Construction (45-60 seconds)**- This part will talk about the various design elements (pocket parks, CPTED, fish elements, biological/archaeological, etc.). The City will provide some construction drone footage and pictures. We think that RDG and someone from our PD would be good to interview to discuss these elements.
  - **Elected Official Speech/Ribbon cutting (30-60 seconds)**- City staff will work with TWP to organize an elected official to be filmed/interviewed and provide a quick speech about the project.
  - **Site Walk (90 seconds)**- TWP will walk through the site filming various aspects and discussing the project; City Staff will help to develop the information/script for this section.
  - **Ongoing Community Involvement (30-45 seconds)**- TWP and City staff will work together to find input from the community about how this project provides benefits. City staff will reach out to Salesian to find out if we can interview and science teacher and a few students, Grey Dwyer from Community Services might be able to talk about the benefits to recreation and seniors, maybe Helen can talk about spawners? we might be able to think of a few more.
- We would like production quality and feel of the Resilient Richmond video that TWP did:
  - <https://www.youtube.com/watch?v=XscrKYHP3fE&list=TLPQMzEwODIwMjBipK5BCL4dIQ&index=1>
- We would also like a Spanish version/voice over of the video.
- Within the video we must acknowledge the grant agencies. We think an image at the end with all of the logos should work and we would also like a verbal acknowledgement somewhere in the video (likely the introduction or during the Ribbon Cutting part).
- The City would like to obtain a copy all "raw" footage of interviews as well as the final product.
  - **Please add the following aspects in the SOW**
    - **Spanish version**
    - **Submittals of raw footage to the City**

### Clarification on Sign

- City staff will work to provide sign dimensions and production material requirements. In addition, City staff will provide TWP with the sign concept and key elements.
  - One required element is acknowledgement to funding agencies, likely with logos (SCC, CNRA, EBRPD, CCTA, CoSP). City will provide all logos to TWP.
- The City will want the final design in an approved format (ex PDF, JPEG, etc.) . This format can be discussed, but will need to be approved.
  - **Please add a sentence regarding submittals in an approved format.**

### Clarification on Educational Aspect

- As part of this work please provide the City with a short report/memo detailing the results of the education. This can be very simple and just provide a general description of content, schools, number of participants and example worksheets/documents etc. We do not want this to be time intensive, just something to memorialize what was done.
  - **Please add a proposed report/memo to the SOW.**

### Timeline

- The Project construction is expected to be completed by early November, which is when TWP can film the walk through (everything else can be filmed before). The City would like to release the video in late November or early December. Would this work with the TWP timeline?
  - **Please provide an estimate timeline in the SOW.**
- When is the proposed timeline for the educational aspect? The City would like to submit our final grant invoice and report by May 2021. Therefore, all educational aspects will need to be completed March 2021.
  - **Please provide an estimate timeline in the SOW.**
- When will be the interpretative sign be ready to install? Ideally, we'd like it to be done around or before mid-October so that Ghilotti can install it. Also, it would be nice to be featured in the walk-thru clip. However, as discussed, this can be a little flexible.
  - **Please provide an estimate timeline in the SOW.**

Let me know if you have any questions or concerns.

*Amanda Booth*

*Senior Environmental Program Analyst*

**Public Works' Office – Bldg. 3**

510.215.3066 | Public Works Main

510.215.3013 | Fax

13831 San Pablo Ave., San Pablo, CA 94806

Email: [AmandaB@sanpabloca.gov](mailto:AmandaB@sanpabloca.gov)

Website: [www.sanpabloca.gov](http://www.sanpabloca.gov)

**ATTENTION:**

**COVID-19 Alert: Following the declarations of emergency by the Federal, State and County governments, the City of San Pablo City Council proclaimed the existence of a local emergency due to Novel Coronavirus (COVID-19) on March 16, 2020. Also on March 16,**

2020, the Contra Costa Health Services, along with 6 other Bay Area Counties and the City of Berkeley, issued an order directing non-essential individuals to stay in their residences and limit travel and activities in the hopes of containing the spread of COVID-19. Accordingly, the City of San Pablo adopted a Modified Operations Plan with limited staff focused primarily on public health and safety from March 17 until further notice. During that time, all City buildings, including City Hall, will be closed to the public. All City Departments will be working at reduced staffing levels and will be providing essential services only, primarily through e-mail and phone. Please check the City's website for additional information about City operations and links to resources for staying safe during this emergency.

<https://www.sanpabloca.gov/CivicAlerts.aspx?AID=596>

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the City of San Pablo. Finally, the recipient should check this email and any attachments for the presence of viruses. The City of San Pablo accepts no liability for any damage caused by any virus transmitted by this email

---

**From:** Juliana Gonzalez <juliana@thewatershedproject.org>  
**Sent:** Monday, August 31, 2020 11:32 AM  
**To:** Amanda Booth  
**Cc:** Anne Bremer; Ronalyn Nonato  
**Subject:** Re: Wildcat Creek Video Ribbon Cutting Update

Hi Amanda and Ronalyn,

Attached is a draft SOW and budget proposal for the community education and outreach services related to the Wildcat Creek Restoration and Greenway Trail Project

I attached the Word version to make sure we can make edits to the text. Anne is out of town this week so I can answer any questions you may have.

Let me know what you think and if you need any additional info from us. I will make sure our insurance endorsement is ready and we can go from there.

Best regards and thank you for inviting us to take part in this exciting project.

Juliana

cell: 510-224-4085

On Fri, Aug 28, 2020 at 10:30 AM Amanda Booth <[AmandaB@sanpabloca.gov](mailto:AmandaB@sanpabloca.gov)> wrote:

Hi Juliana,

City staff are going to meet about the virtual ribbon cutting event next week but in general I wanted to provided the guidance that this will be a pre-recorded ribbon cutting video, approximately 5 in length with a potential 60 sec "teaser." I will provide more details next week, but hopefully this will help with the costing and scope of work.

***Amanda Booth***

*Senior Environmental Program Analyst*

**Public Works' Office – Bldg. 3**

510.215.3066 | Public Works Main

510.215.3013 | Fax

13831 San Pablo Ave., San Pablo, CA 94806

Email: [AmandaB@sanpabloca.gov](mailto:AmandaB@sanpabloca.gov)

Website: [www.sanpabloca.gov](http://www.sanpabloca.gov)

**ATTENTION:**

COVID-19 Alert: Following the declarations of emergency by the Federal, State and County governments, the City of San Pablo City Council proclaimed the existence of a local emergency due to Novel Coronavirus (COVID-19) on March 16, 2020. Also on March 16, 2020, the Contra Costa Health Services, along with 6 other Bay Area Counties and the City of Berkeley, issued an order directing non-essential individuals to stay in their residences and limit travel and activities in the hopes of containing the spread of COVID-19. Accordingly, the City of San Pablo adopted a Modified Operations Plan with limited staff focused primarily on public health and safety from March 17 until further notice. During that time, all City buildings, including City Hall, will be closed to the public. All City Departments will be working at reduced staffing levels and will be providing essential services only, primarily through e-mail and phone. Please check the City's website for additional information about City operations and links to resources for staying safe during this emergency.

<https://www.sanpabloca.gov/CivicAlerts.aspx?AID=596>

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the City of San Pablo. Finally, the recipient should check this email and any attachments for the presence of viruses. The City of San Pablo accepts no liability for any damage caused by any virus transmitted by this email

--

Juliana Gonzalez

***Executive Director***

The Watershed Project  
1327 South 46th Street, Bldg 155  
Richmond CA 94804  
[juliana@thewatershedproject.org](mailto:juliana@thewatershedproject.org)  
510-665-3430

## Exhibit B



September 14, 2020

### **Scope of Work for the Wildcat Creek Restoration and Greenway Trail Project**

The Watershed Project will provide the following community education and outreach services related to the Wildcat Creek Restoration and Greenway Trail Project:

- Create an interpretive sign, including funding agency acknowledgement, for the project site in coordination with City of San Pablo staff to develop concept and key elements of the sign. The Watershed Project will submit the final design for the sign in a format approved by the City of San Pablo.
- Produce a short (~5 minute) educational video about the project and its value to the community. The Watershed Project will work with the City of San Pablo to outline content for the video, connect with a teacher at Salesian High School to evaluate the possibility of student participation in the video, help recruit other local resident to speak about the benefits of the project, and identify additional footage as needed, possibly including aerial footage provided by the City of San Pablo or filming along the new Greenway Trail. The Watershed Project will produce a Spanish language voiceover of the video in addition to the English version, and submit all raw footage to the City of San Pablo as well as the final edit.
- Partner with teachers at one or more San Pablo elementary schools to deliver our Me& My Watershed program, consisting of 8 lessons. Students will investigate the guiding question, “How am I a part of my watershed?” The lessons in this program will provide students with a foundational understanding of what a watershed is, how they are connected to the local watershed, and the importance of creek health. Through nature journaling, students have the chance to explore, observe, and personally reflect on these connections. The format of the lessons will be flexible depending on how teachers are able to interact with their students and distribute materials to them, but may include a combination of live video lessons, online student-directed assignments, and physical curriculum kits for students containing handouts and project materials. Lessons will be designed to be completed at home, but will also encourage students to safely explore their neighborhoods outdoors. Students will be introduced to the Wildcat Creek Restoration and Greenway Trail project site and will be encouraged to visit it with their families. The Watershed Project will provide education programming to two elementary grade levels (approximately 150-200 students). The Watershed Project will provide the City of San Pablo with a short report detailing the results of this education, including content, schools, number of participants, and example documents.



**Timeline**

<b>Deliverable</b>	<b>Estimated Date of Completion</b>
Interpretive sign ready for installation	10/19/2020
Final script for video	10/09/2020
Video shooting and image compilations	10/31/2020
Complete video draft for review	11/10/2020
Finalized edits of video (English and Spanish versions)	12/01/2020
Report on elementary education programming	3/31/2021

**Budget**

The Watershed Project Budget to the City of San Pablo							
Wildcat Creek Restoration and Greenway Trail Project							
Labor	Executive Director		Program Manager		Program Coordinator		Cost
	Hours	Rate	Hours	Rate	Hours	Rate	
Administration and reporting	8	\$65	8	\$50		\$40	\$920
Interpretive signage coordination	8	\$65	24	\$50		\$40	\$1,720
Video production	8	\$65	24	\$50	32	\$40	\$3,000
Watershed education coordination	4	\$65	12	\$50	24	\$40	\$1,820
Watershed education delivery		\$65	40	\$50	48	\$40	\$3,920
<b>Labor Subtotal</b>							<b>\$11,380</b>
Supplies and Subcontractors				Quantity		Cost	
Video filming and editing consultant							\$12,500
Artist for interpretive sign graphics							\$1,500
Print interpretive signage							\$2,000
Materials, printing and travel							\$620
<b>Direct Subtotal</b>							<b>\$6,620</b>
<b>Overhead (10%)</b>							<b>\$2,000</b>
<b>Total</b>							<b>\$30,000</b>