

**THE RESURFACING AND SAFETY IMPROVEMENTS ON
CROW CANYON ROAD
AT VARIOUS LOCATIONS
EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA
SPECIFICATION NO. 2410**

This addendum is issued by the County of Alameda, Public Works Agency, Construction and Development Services Department, 399 Elmhurst Street, Hayward, CA 94544.

TO ALL PROSPECTIVE BIDDERS for the above project, notice is hereby given that the following changes, modifications, corrections, clarifications, and additions as hereinafter set forth shall apply to the plans and specifications described herein and shall be made part thereof and subject to all requirements as if originally specified or drawn.

Receipt of this Addendum No. 2 must be acknowledged on the form in the bid proposal in writing.

GENERAL

A. Responses to Bidders' inquiries can be viewed at the following Public Works' website:

<https://www.acpwa.org/business/add-bidder-info.page>

This document will be continuously updated. It is the contractor's responsibility to check for updates.

CHANGES TO THE SPECIAL PROVISIONS

1. Replace pages BB-7 thru BB-8 with the attached pages BB- 7 thru BB-8 (Addendum 2).
2. Replace page 157 with the attached page 157 (Addendum 2).
3. Replace page 794 with the attached page 794 (Addendum 2).
4. Add APPENDIX N: (Pre-Final Draft) California Department of Fish & Wildlife Streambed Alteration Agreement

CHANGES TO THE PLANS

1. Replace Plan Sheets 18 thru 20 with the attached Plan Sheets 18 thru 20 (Addendum 2)
2. Replace Plan Sheet 36 with the attached Plan Sheet 36 (Addendum 2).

END OF ADDENDUM NO. 2
OFFICE OF THE COUNTY ENGINEER

No.	Sec/Code	Bid Item Description	Qty	Unit	Unit Cost	Total Cost
39*	<u>§51</u> 510094-A	Structural Concrete, Drainage Inlet (Type GT4)	2	EA	\$	\$
40*	<u>§51</u> 510094-A	Structural Concrete, Headwall (Straight)	1	EA	\$	\$
PIPE / DRAINS						
41*	<u>§66</u> 650010	12" Corrugated Metal Pipe (0.079" Thick)	23	LF	\$	\$
42*	<u>§66</u> 650010	24" Corrugated Metal Pipe (0.079" Thick)	25	LF	\$	\$
43*	<u>§65</u>	Remove Storm Drain Pipe (All Sizes)	40	LF	\$	\$
44*	<u>§15-1.03B</u> 153122	Remove Headwall	2	EA	\$	\$
45*	<u>§19-3.02E</u>	Abandon Pipe (Slurry Cement Fill)	45	CY	\$	\$
46*	<u>§26-1.02B</u> 260203	Remove Inlet	1	LS	\$	\$
47*	<u>§61-3</u>	18" Dual Wall Type S HDPE Pipe	135	LF	\$	\$
48*	<u>§61-3</u>	24" Dual Wall Type S HDPE Pipe	80	LF	\$	\$
49*	<u>§61-3</u>	36" Dual Wall Type S HDPE Pipe	70	LF	\$	\$
50*	<u>§69</u>	18" Pipe Anchor Assembly	2	EA	\$	\$
51*	<u>§69</u>	24" Pipe Anchor Assembly	3	EA	\$	\$
52*	<u>§19-3.02E</u>	Pipe Structure Backfill (Slurry Cement Fill)	320	CY	\$	\$
53*	<u>§64-2.02B</u>	Structure Backfill	60	CY	\$	\$
54*	<u>§64-2.02B</u>	Rock Ballast	40	CY	\$	\$
55*	<u>§19-3.02J</u>	Filter Fabric	300	SY	\$	\$
DRAINAGE FACILITIES						
56*	<u>§72-2</u>	Rock Slope Protection (Backing 1, Method B)	200	CY	\$	\$
57*	<u>§96-1.02I</u>	Rock Slope Protection Fabric (Class 8)	300	SY	\$	\$
58*	<u>§72-16</u> 722020	Gabion	90	CY	\$	\$
59*	<u>§46-3.02</u>	Sprial Nail System (L = 14')	41	EA	\$	\$

Locally Funded Project

Specification No. 2410

No.	Sec/Code	Bid Item Description	Qty	Unit	Unit Cost	Total Cost
60*	<u>§46-3.02</u>	Sprial Nail System (L = 17')	N/A	EA	\$0	\$0
61*	<u>§71-5</u> 710200	Adjust Manhole to Grade	10	EA	\$	\$
CONCRETE CURBS & SIDEWALKS						
62	<u>§73</u> 730070-A	Detectable Warning Surface (Yellow)	40	EA	\$	\$
63*	<u>§73</u> 731504-A	Minor Concrete (Curb and Gutter – Standard or Rolled Curb)	1,200	LF	\$	\$
64*	<u>§73</u> 731521-A	Minor Concrete (Sidewalk, Curb Ramp, Median Island, Median Island Passageway, Valley Gutter)	5,600	SF	\$	\$
65*	<u>§73</u> 731840	Remove Concrete (Curb and Gutter)	280	LF	\$	\$
66*	<u>§73</u> 731760-A	Remove Concrete Curb Ramp, Sidewalk, Valley Gutter, and Median Island	5,500	SF	\$	\$
LOCAL INFRASTRUCTURE						
67*	<u>§77</u> 710214-P	Adjust Valve Box –PG&E	12	EA	\$	\$
68*	<u>§77</u> 710214-E	Adjust Valve Box – EBMUD	65	EA	\$	\$
69*	<u>§77</u> 710214-P	Adjust Electric Well Box – PG&E	1	EA	\$	\$
70*	<u>§77</u> 710220-E	Adjust Utility Cover – EBMUD	13	EA	\$	\$
71*	<u>§77</u> 710214-P	Adjust Conductor Box – PG&E	2	EA	\$	\$
72*	<u>§77</u> 710220-P	Adjust Manhole Frame and Cover – AT&T	7	EA	\$	\$
73*	<u>§77</u> 710220-P	Adjust Manhole Frame and Cover – CVSD	23	EA	\$	\$
74*	<u>§77</u> 710220-P	Adjust Manhole Frame and Cover – PG&E	1	EA	\$	\$
75*	<u>§77</u> 710192	Adjust Sewer Cleanout to Grade (CVSD)	6	EA	\$	\$
76*	<u>§78-2</u> -	Survey Monument (Type A)	5	EA	\$	\$
77*	<u>§78-4.03</u> 780433-LF	Paint Red Curb (2 Coat)	80	LF	\$	\$
78*	<u>§80</u> 800100	Barbed Wire Fence and Posts	90	LF	\$	\$
79*	<u>§80</u> 800100	Chain Link Fence (6'), Gate, Post, and Foundations	45	LF	\$	\$

12-4.01A(6) Open Traffic Lane Requirements

A minimum of one paved traffic lane, not less than 12 feet wide, must be open for use by public traffic at all times during work hours on the two lane section of roadway, unless otherwise approved by the Engineer or specified elsewhere. A minimum of two paved traffic lanes (one in each direction of traffic) must be open for use by public traffic at all times during work hours on the four-lane section of roadway, unless otherwise approved by the Engineer. Not less than two such All lanes must be open to two-way public traffic when construction operations are not actively in progress.

12-4.01A(7) Notification Letter

Prepare and distribute a notification letter(s) to all residents, school officials, and business entities two weeks in advance and another letter at least 72 hours prior to any work. This letter(s) must be reviewed by the Engineer prior to distribution. Coordinate with school officials to minimize any disruption to school activities and to maintain accessibility to the schools within the proximity of the construction areas where overlaying operations will be performed. A sample letter is included as part of the Information Handouts.

12-4.01A(8) No Parking

Post temporary NO PARKING signs (sample in Information Handout J) 72 hours prior to working on roadways. On these signs, specify the day work will occur on the roadway. If you cannot work on the posted date, remove the signs and re-post them 72 hours prior to the new work day.

Consecutive time periods of parking restrictions on each roadway for overlay must be limited to no more than the following:

- 1 - 10 hour period for base repair
- 1 - 10 hour period for keycutting or milling
- 3 - 10 hour period for paving operations

No two adjacent roadways can be closed or have parking restricted on the same day. Immediately re-post/re-date no parking signs and barricades for any revisions of schedule including changes caused by inclement weather. Immediately remove these upon expiration of the dated work.

12-4.01A(9) End of Day Tasks

At the end of each working day, install temporary raised reflective markers, temporary pavement markings, and temporary crosswalks to replace existing striping and markings that have been removed by keycutting, base repair, excavation or intermediate layers of asphalt concrete.

Ensure compliance with section 10-1.02E, "Excavation," which requires tapered transitions at vertical offsets at the end of the working day.

When construction operations are not actively in progress or are concluded at the end of each day:

- All traffic lanes shall be made safe and open to traffic
- All entrances to private property shall be restored and made accessible
- All entrances to private property shall be secured and/or locked
- All removed fences shall be re-installed
- All work areas shall be cleaned and all debris removed
- All equipment and materials shall be secured and made safe from the public

12-4.01B Materials

Not Used

12-4.01C Construction

SECTION 73

CONCRETE CURBS AND SIDEWALK

Broom finish the surface of sidewalks, gutter depressions, curb ramps, and driveways. Make the broom finish perpendicular to the path of travel on surfaces used by pedestrians. You may apply water to the surface immediately before brooming.

The finished surface must not vary more than 0.02 foot from a 10-foot straightedge except at grade changes.

If placing pavement around or adjacent to manholes, pipe inlets, or other miscellaneous structures in sidewalk, gutter depression, island paving, curb ramps, or driveway areas, do not finish the miscellaneous structures to final grade until the pavement is finished beyond the miscellaneous structure.

If using fixed forms, strike off and compact fresh concrete until a layer of mortar is brought to the surface. Finish the surface with a float to grade and cross section and trowel smooth.

Leave forms in place for sidewalks, gutter depressions, island paving, curb ramps, and driveways for at least 12 hours after surface finishing.

Clean any discolored concrete by abrasive blast cleaning or other authorized method.

73-3.04 PAYMENT

The quantity of sidewalk, driveways, median island, median island passageway, valley gutter, and curb ramps (including retaining curb) to be paid for will be determined by measuring the length of the center line and the width at right angles to the center line to compute the area in square feet to the nearest 0.1 of a square foot.

Payment includes the cost of providing concrete block-outs (with 2" thick asphalt paving) and no reduction of sidewalk area is made because of concrete block-outs.

The quantity of cushion material is not measured.

The payment quantity for minor concrete (curb ramp) does ~~not~~ include detectable warning surface unless the Bid Item List includes a separate bid item for detectable warning surface.

73-4 TEXTURED CONCRETE AND COLORED CONCRETE SURFACES

73-4.01 GENERAL

73-4.01A Summary

Section 73-4 includes specifications for texturing and coloring concrete surfaces. Texture concrete by imprinting with stamps, tools, brooms, or other methods to attain the pattern or impressions shown.

73-4.01B Definitions

Reserved

73-4.01C Submittals

Submit the manufacturer's data for the color hardener and curing and finishing compounds for each color of a concrete surface colored by the dry-shake method.

73-4.01D Quality Assurance

73-4.01D(1) General

Reserved

73-4.01D(2) Quality Control

Construct test panels for textured or colored concrete under section 51-1.01D(2)(c).

73-4.01D(3) Agency Acceptance

The Agency accepts textured or colored concrete surfaces based on a visual comparison with the test panel.

73-4.02 MATERIALS

Aggregate for textured or colored concrete surfaces must comply with the gradation requirements for fine aggregate.

Improvements on Crow Canyon Road

APPENDIX N

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 BAY DELTA REGION
 2825 CORDELIA ROAD, SUITE 100
 FAIRFIELD, CALIFORNIA 94534
 (707) 428-2002



STREAMBED ALTERATION AGREEMENT
 EPIMS-ALA-15171-R3
 CROW CREEK

JIM BROWNE
 ALAMEDA COUNTY PUBLIC WORKS AGENCY
 CROW CANYON ROADWAY SHOULDER REPAIRS

PRE-FINAL DRAFT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Alameda County Public Works Agency (Permittee) as represented by Jim Browne.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on February 8, 2021, with subsequent notification of project expansion modifications provided on June 16, 2021 and August 12, 2021 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The Project is located along Crow Canyon Road, at distances between 40 feet and 100 feet south of Crow Creek, between mile markers (MM) 5.83 to 6.25 in the County of Alameda, State of California; Latitude 37.76600°, Longitude -122.01707°. The nearest street address for the adjoining property to the Project is a private business at 10970 Crow Canyon Road, Castro Valley, CA 94552.

Access to the site will be from Crow Canyon Road.

PROJECT DESCRIPTION

The Project is limited to the stabilization of the southerly embankment of Crow Creek, in order to maintain the existing Crow Canyon roadway. This will entail repair of the storm-damaged road shoulder at four locations and improving drainage by the replacement of old failed culverts at three additional locations along Crow Canyon Road.

The work at four locations between road mileage markers MM 6.00 and MM 6.25 includes:

- 1) Construction of four retaining walls at four discrete locations with varying lengths of 50, 100, 106.5 and 140 feet, consisting of approximately seventy-two 40-foot long, drilled and cast-in-place steel piles encased in concrete, with pressure-treated timber lagging placed in-between;
- 2) Replacement of approximately 1,300 linear feet of existing guardrail; and
- 3) Reconstruction of the damaged section of the roadway pavement with new asphalt concrete

Work at the other three locations includes retirement and slurry cement filling of an existing corrugated metal pipe (CMP) at each location, and installing new storm drain structures with outfalls and rock slope protection (RSP) on the upper bank at the following mileage markers (MMs):

- 1) MM 5.83
 - Installation of a grate inlet with concrete apron on the southern side of the roadway.
 - Installation of a 73-foot long, 24-inch diameter high density polyethylene (HDPE) pipe beneath the roadway, of which approximately 28 feet of the pipe will be along the upper southern bank of Crow Creek.
 - Gabion baskets (total of 252 square feet) holding approximately 84 cubic yards (CY) of rock will be embedded into the slope and covered with approximately 32 CY of RSP and approximately 19 CY of soil within an approximately 420 sq. ft. area at the outfall on the upper southern bank of Crow Creek.
- 2) MM 5.91
 - Inlet work on the southern side of the roadway includes installation of grate inlet, CMP, RSP and replacement of headwall.
 - Installation of a 63-foot long, 36-inch diameter HDPE pipe beneath the roadway, of which approximately 10 feet of the pipe will be along the upper southern bank of Crow Creek.
 - Installation of a 4-foot long, 12-inch diameter CMP to extend the reach of the existing 12-inch diameter CMP to RSP on the upper southern bank of Crow Creek.

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- Installation of approximately 95 CY of RSP within an approximately 676 sq. ft. area at the outfall on the upper southern bank of Crow Creek.

3) MM 6.10

- Inlet work on the southern side of the roadway includes removal of headwall, and installation of inlet with concrete apron and RSP.
- Installation of a 110-foot long, 18-inch diameter HDPE pipe beneath the roadway, of which approximately 30 feet of the pipe will be along the upper southern bank of Crow Creek anchored by soil nails and ties.
- Installation of approximately 5 CY of rock within an approximately 35 sq. ft. area at the outfall on the upper southern bank of Crow Creek.

The Project will be done within an Alameda County right of way (ROW). A portion of the work will be done within adjacent acquired ROW. No work will be done closer than 10 feet from the southern edge of the bed of Crow Creek.

Coast live oak riparian habitat occurs within and adjacent to the Project area. At each distinct location, onsite activities prior to construction include trimming, clearing and grubbing of vegetation. Forty-two (42) oak, maple, buckeye, cedar and California bay laurel trees, as well as some vegetative understory will be removed. An approximate total of 9,772 sq. ft. of vegetation and upper stream bank below the existing roadway will be temporarily disturbed during construction, and 1,131 sq. ft. of stream bank will be permanently impacted through the installation of RSP and gabion structures.

Temporary and permanent impacts to vegetation and trees will be mitigated onsite with hydroseed and plantings that shall start in fall or winter following completion of construction, as well as offsite in accordance with a Vegetation Restoration Plan that will be prepared for CDFW approval.

The stream bed was dry at points upstream of and below the construction zones on May 27, 2021, but pools of water were still evident a short distance downstream. California red-legged frog, a special-status species, may occur within the Project vicinity. Biological monitoring, pre-construction surveys, and use of exclusion fence will be implemented to reduce potential impacts to the species and habitat.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include:

- Vegetated streamside habitat
- stream habitat
- amphibians, including California red-legged frog *Rana draytonii*, Federally threatened, state species of special concern
- reptiles and insects
- terrestrial and aquatic species

The adverse effects the project could have on the fish or wildlife resources identified above include:

- temporary loss of vegetation in riparian zone
- temporary and permanent loss of upper bank habitat
- change in gradient or contour of bank
- loss of inputs of organic material into stream channel
- change in thermal regimens in riparian zone due to removal of vegetation
- increased turbidity
- increased sedimentation
- short-term release of contaminants
- disruption to birds and other wildlife, and
- direct take of terrestrial and amphibian species.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another State, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Compliance with Federal Endangered Species Act. Permittee shall implement and adhere to the conservation measures that must be implemented as part of the proposed project, as in the Informal Consultation for the Crow Canyon Roadway Shoulder Repairs Project in Alameda County, California (ER-32L0520) December 9, 2020 response to the California Department of Transportation (Caltrans) request for informal consultation. For purposes of this Agreement, where the conservation measures in the federal authorization are less protective or otherwise conflict with this Agreement, the measures set forth in this Agreement shall control.
- 1.4 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event,

CDFW shall contact Permittee to resolve any conflict.

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- 1.5 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement. As a result of field inspection, CDFW may require that additional conditions be applied to protect sensitive biological resources. Such conditions may be amended into this Agreement with the agreement of both parties.
- 1.6 Notify CDFW Prior to Work. Permittee will notify CDFW Bay Delta Region seven calendar days prior to the initiation, and at least seven calendar days following completion, of work. Notification shall be emailed to Serge Glushkoff, Senior Environmental Scientist, at Serge.Glushkoff@wildlife.ca.gov.
- 1.7 No Trespass. To the extent that any provisions of this Agreement provide for activities that require the Permittee to traverse another owner's property, such provisions are agreed to with the understanding that the Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.
- 1.8 Unauthorized Take. The Permittee is required to comply with all applicable State and Federal laws, including the California Endangered Species Act (CESA) and Federal Endangered Species Act. This Agreement does not authorize the take of any State or Federal endangered or threatened species. Liability for any take or incidental take of such listed species remains the responsibility of the Permittee for the duration of the project. Any unauthorized take of such listed species may result in prosecution and nullification of the Agreement.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

Work Periods and Design

- 2.1 Work Period. All work shall begin on or after April 15 and shall be completed by October 15. Revegetation work using hand tools or causing minimal disturbance is not limited to this work window but must be completed within the same season as Project activities.
- 2.2 Work Period Modification. If the Permittee needs more time to complete the authorized activity, the work period may be extended at the discretion of CDFW, by contact with Mr. Serge Glushkoff, Senior Environmental Scientist at (707)339-6191. Serge.Glushkoff@wildlife.ca.gov or if unavailable, through contact with the Regional office at 707-428-2002. Permittee shall submit a written request for a work period variance to CDFW. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) provide a National Weather Service forecast covering the time to need to complete a phase or activity; 4) detail the time required to complete each of the remaining activities; 5)

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include a description of stream conditions; and 6) provide photographs of both the current work completed and the proposed site for continued work. The work period variance request should consider the effects of increased stream flows, higher turbidity, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period. CDFW reserves the right to require additional measures to protect fish and wildlife resources as a condition for granting the work period modification.

- 2.3 Daily Work Window. Unless otherwise authorized in writing by CDFW, Permittee shall terminate all project activities covered under this Agreement 30 minutes before sunset and shall not resume until 30 minutes after sunrise. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located.
- 2.4 Work Period in Dry Weather Only. Project work shall be restricted to dry weather as allowed during the work period specified in Measure 2.1. Construction shall be timed with awareness of precipitation forecasts and potential increases in stream flow. Construction activities shall cease when the National Weather Service (NWS) 72-hour weather forecast indicates a 30 percent chance or higher of precipitation. All necessary erosion control measures shall be implemented prior to the onset of precipitation. Construction equipment and materials shall be removed if inundation is likely. Construction activities halted due to precipitation may resume when precipitation ceases and the NWS 72-hour weather forecast indicates less than a 30 percent chance of precipitation. No work shall occur during a dry-out period of 24 hours after the above referenced wet weather. Weather forecasts shall be documented upon request by CDFW. Project activities shall be restricted to periods of dry weather. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities.
- 2.5 Work According To Plans. Permittee shall conduct all work according to the Project Description stated above and submitted plans. This includes dimensions of all excavations, fill and rock slope protection, and location of sediment barriers. Permittee shall notify CDFW of any modifications made to the plans submitted to CDFW that pertain to impacts to streams, wetlands, or riparian corridors. At the discretion of CDFW, minor plan modifications may require an amendment to this Agreement. At the discretion of the CDFW, if substantial changes are made to the original plans this Agreement becomes void and the Permittee shall submit a new notification.

Compliance Monitoring

- 2.6 On-site Education. Permittee shall conduct an education program for all persons employed or otherwise working on the project site prior to performing any work on-site. The program shall consist of a presentation from a Qualified Biologist that includes a discussion of the biology of the habitats and species identified in this Agreement and

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present at this site. A Qualified Biologist shall also include as part of the education program information about the penalties for violations and project-specific protective measures included in this Agreement. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. All workers present at the on-site education shall sign a roster acknowledging that they participated in the training event and that roster shall be kept on-site and made available upon request.

2.7 CDFW-Approved Qualified Biologist(s) and Monitor(s). Prior to commencement within the areas covered by this agreement, Permittee shall submit to CDFW for review and approval the names and resumes of all qualified biologists and biological monitors involved in conducting surveys and/or monitoring work.

A Qualified Biologist is an individual who shall have a minimum of four years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the project area.

A Biological Monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area, and be familiar with the habits and behavior of those species.

2.8 Qualified Biologist Responsibility. The Qualified Biologist shall be responsible for monitoring all project activities at all sites subject to this Agreement, including supervision of all biological monitors, and all phases of activities in areas subject to this Agreement.

2.9 Biological Monitor Authority. The Biological Monitor(s) shall have the authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid or minimize impacts to fish and wildlife resources, in consultation with CDFW.

2.10 Biological Monitor Liability. Neither the biological monitor nor the CDFW shall be liable for any costs incurred as a result of compliance with this measure. This includes cease-work orders issued by the CDFW.

2.11 Biological Monitor Responsibilities. The Biological Monitor shall be responsible for monitoring all project activities and on-site compliance with all measures of this Agreement, and shall be present at all times when initial ground-disturbing activity, vegetation management (tree and vegetation removal), and construction is occurring. During periods of inactivity or after clearing, grubbing, and grading are completed compliance inspections by the Designated Biologist may be reduced if Permittee obtains written approval from CDFW. The Biological Monitor will also be accessible via cell phone should construction staff observe any risk of harm, or harm, to fish and wildlife.

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2.12 Pre-Construction Wildlife Surveys. Within 14 days prior to any construction or staging activities, a CDFW-approved biologist shall conduct a preconstruction survey for wildlife in the active construction work areas. Survey results may be documented in a brief memo or monitoring form and shall note the occurrence, location, or indication of species presence (e.g., active nest, occupied burrow of any special-status species). If a special-status wildlife species is observed, work shall not begin until the species departs the construction area or is moved out of the construction area to a CDFW-approved relocation site. If at any point construction activities cease for more than 7 days, additional surveys shall be conducted prior resumption.

2.13 California Red-Legged Frog Protection. In the event that California red-legged frogs (CRLF) are found onsite, construction activities shall cease within 100 feet of the sighting and the frog will be allowed to move away from the project site of its own volition until no harm may occur to the individual from project-related activities. The U.S. Fish and Wildlife Service (Service) and CDFW shall be notified within 24 hours of the sighting. If Permittee and the Service determine that adverse effects to CRLF cannot be avoided, construction activities will remain suspended until Permittee and the Service complete the appropriate level of consultation.

2.14 Monitoring During Covered Activities. Prior to the start of each workday, a Biological Monitor or trained construction staff (see Measures 2.6 through 2.11) shall check under construction equipment to ensure no wildlife is utilizing the equipment as temporary shelter.

2.15 Nesting Bird Surveys. If construction, grading, vegetation removal, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds from January 15 to September 1, a focused survey for active nests of such birds shall be conducted by a qualified biologist within 7 days prior to the beginning of project-related activities. The results of the survey shall be sent Serge Glushkoff, Senior Environmental Scientist, by email (Serge.Glushkoff@Wildlife.ca.gov) prior to the start of project activities. Refer to Notification Number EPIMS-ALA-15171-R3 when submitting the survey to CDFW. If an active nest is found, Permittee shall consult with the United States Fish and Wildlife Service (USFWS) and CDFW regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and Fish and Game Code. If a lapse in project-related work of 7 days or longer occurs, another focused survey and if required, consultation with CDFW and USFWS, shall be required before project work can be reinitiated.

Impact Avoidance/Minimization Measures

2.16 Allow Wildlife to Leave Unharmed. Permittee shall allow any wildlife encountered during the course of construction to leave the construction area unharmed. This authorization does not allow for the trapping, capture, or relocation of any state or federally listed species.

2.17 Demarcate Work Area Boundary. The contractor will demarcate the outer perimeter of the work area with construction fencing to prevent damage to adjacent habitat and

provide visual orientation to its limits. Prior to full mobilization, a Qualified Biologist will then inspect the demarcation and adjust as necessary to protect bank vegetation and habitat. The Qualified Biologist will also be present to monitor the activities and ensure the fencing does not go beyond the boundaries provided in the notification. Marking shall be in place during all periods of operation. All persons employed or otherwise working on the project site shall be instructed about the restrictions that the marking represents.

- 2.18 Sediment Barrier and Wildlife Exclusion Fence. A sediment barrier will be used to prevent California red-legged frogs and wildlife from entering the proposed project area, and to prevent sediment from moving downhill further into the riparian zone of Crow Creek. Exclusion fencing will be at least 3 feet high and the lower 6 inches of the fence will be buried in the ground to prevent animal entry. The remaining 2.5 feet will be left above ground to serve as a barrier for animals moving on the ground surface. The fence will be pulled taut at each support to prevent folds or snags. Fencing shall be installed and maintained in good condition during all construction activities. Fencing shall be inspected and maintained daily until completion of the proposed project. The fencing will be removed only when all construction equipment is removed from the site. Exclusion fencing shall be installed at least twenty-four (24) hours prior to beginning work to prevent wildlife from entering the site, after site inspection by the qualified biologist (to ensure that no animals are trapped).
- 2.19 Staging Areas. Equipment, spoils, and other project materials shall be staged at least 50' from the low-flow stream channel.
- 2.20 Wash Equipment Prior to Site Entry. All equipment moving onto the site vicinity shall be pressure washed prior to site entry to reduce the risk of transporting soil pathogens and other invasive agents.
- 2.21 Trees Marked for Removal. Prior to vegetation removal, the Qualified Biologist shall clearly mark or delineate the limits of vegetation to be removed. Vegetation outside the project area or not marked shall not be removed or damaged without prior consultation and approval from a CDFW representative. Only the trees marked for removal on Sheets 6, 10, 14 and 18, each titled **Paving/Tree Removal**, from the **Plans for Storm Damage Repairs Along Crow Canyon Road December 2020**, and the trees marked for removal on Sheets 1 -3 from **Crow Canyon Road at Various Locations – Plan and Profiles for Culvert Replacement July 2021 PRE-FINAL** (Exhibits A and B, respectively) may be removed.
- 2.22 Root Mass and Stump Retention. Where possible in zones outside of retaining wall and outfall structures where trees must nevertheless be removed for access, Permittee shall leave the root mass and stumps in place to allow for resprouting and bank stability.
- 2.23 Open Construction Excavation, Trenches, and Inspection. To prevent the accidental entrapment of wildlife, Permittee shall cover all excavated holes or trenches deeper than 6 inches with plywood or similar material and bury the perimeters, leaving no

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cracks or open spaces, at the end of each workday. Edges of plywood shall be weighted down to prevent movement. At the end of each workday, Permittee shall ramp trenches and large excavations that cannot easily be covered to allow trapped animals to escape. Ramps may be constructed of either dirt fill or wood planking or other suitable material placed at angles no greater than 30 degrees, and shall be installed at intervals of no less than 30- to 45-inches apart unless otherwise authorized by CDFW. Biological monitors shall inspect holes, trenches, and ramps each morning that construction activities occur, or otherwise at intervals of no less than 24 hours.

- 2.24 **Pipes, Hoses, and Similar Structures.** All pipes, hoses, or similar structures less than 12 inches in diameter shall be closed or covered to prevent animal entry. All such structures greater than 2 inches in diameter stored at the project site overnight shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.
- 2.25 **Refueling of Equipment.** Refueling of construction equipment and vehicles shall not occur within 200 feet of any watercourse, or anywhere that spilled fuel could drain to a watercourse. Oil pans or similar materials that will not break down from exposure to petroleum products shall be placed underneath the construction equipment and vehicles, when refueling, to capture incidental spillage of fuels. Equipment and vehicles operating in the project area shall be checked and maintained daily to prevent leaks of fuels, lubricants, or other liquids.
- 2.26 **Rock Slope Protection and Gabion Structures Limited to Planned Quantities** Rock slope protection and gabion structures installed on the bank shall not exceed those in the project description, in size or quantity.
- 2.27 **Maintenance of Gabion Structures.** Permittee shall inspect gabion structures on at least an annual basis to ensure that no broken rods of gabion lattice are exposed, and that the baskets do not fail to the extent of dislodging cobble or boulders from their anchored positions. Gabion repair, with necessary permits, shall be done as needed to maintain their bank stabilization function.
- 2.28 **Fill Voids in Rock Rip-Rap.** Permittee shall ensure that the all voids and spaces within the rip-rap wall are filled. The air spaces between rocks shall be filled with smaller rock, gravels, and native soil material.
- 2.29 **Protect Banks and Vegetation.** Care shall be taken during placement or movement of materials on the stream banks to prevent any damage to stable stream banks and to minimize damage to any streambank vegetation.
- 2.30 **Erosion Control.** At no time shall silt laden runoff be allowed to enter the channel, or directed to where it may do so. Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to do so. Erosion control measures, such as silt fences, straw hay bales,

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gravel or rock lined ditches, water check bars, and broadcasted straw shall be used wherever sediment has the potential to leave the work site and enter the stream.

- 2.31 Monofilament. Permittee shall not use erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material. Coconut coir matting is acceptable.
- 2.32 Cover Exposed Spoils. The contractor shall have readily available plastic sheeting and will cover exposed spoil piles and exposed areas to prevent these areas from losing loose soil into any unnamed drainage. These covering materials shall be applied when it is evident rainy conditions threaten to erode loose soils into State waters.
- 2.33 Concrete Curing. All cement-based products (concrete, mortar, etc.) poured or applied wet onsite shall be excluded from the wetted channel or areas where they may come into contact with water for a period of 30 days after application. During that time the product shall be kept moist and runoff from the product shall not be allowed to enter the stream. Commercial sealants may be applied to the product surface or mixture where difficulty in preventing leakage for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is cured.
- 2.34 Concrete – Primary Containment. Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering the channel outside of those structures.
- 2.35 Hazardous Substances. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering Crow Creek. Any of these materials, placed within or where they may enter the channel by Permittee or any party working under contract, or with the permission of Permittee, shall be removed immediately.
- 2.36 Spill of Material Deleterious to Fish and Wildlife. In the event of a hazardous materials spill into a stream (e.g., concrete or bentonite), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling 1-800-852-7550 and immediately provide written notification to CDFW by email at R31600Program@wildlife.ca.gov. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately deliver them to CDFW. Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation and compensatory mitigation for the harm caused to fish, wildlife and the habitats on

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which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. Spill of materials to waters of the state that are deleterious to fish and wildlife are in violation of Fish and Game Code section 5650 et. seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.

- 2.37 Erosion Control Maintenance. Permittee shall make modifications, repairs and improvements to erosion control measures whenever it is needed.
- 2.38 Pick Up Debris. Permittee shall pick up all debris and waste daily and ensure appropriate disposal offsite.

Site Restoration

- 2.39 Restore Banks and Bed. In the event that there is any disturbance beyond the limits described in the project notification and project description to the stream, the Permittee shall notify CDFW and the Permittee shall return the stream bank to pre-project grade and conditions. Significant bank or channel alteration other than that described in the notification and description may require an amendment to this Agreement.
- 2.40 Treat Exposed Areas. Permittee shall stabilize all disturbed soils within the area covered in this Agreement site to reduce erosion potential, both during and following construction.
- 2.41 Revegetation and Vegetation and Restoration Plan. Revegetation shall be completed as soon as possible after construction activities cease. Within 90 days of the execution of this Agreement, a Vegetation Restoration Plan shall be submitted to CDFW for review, comment and approval. The project shall be considered fully compliant and authorized to begin construction once final approval for the Plan has been issued by CDFW. The Plan shall include onsite restoration for all impacts to the bank of Crow Creek and its vegetation, including all age classes and species of trees that were removed. The Plan shall also provide a proposal for compensatory offsite restoration within the Alameda Creek watershed for final areal impacts that cannot be fully mitigated onsite at the areal ratios below, calculated by square footage. The compensation may be in form of financial support stream habitat restoration, enhancement or credits purchased at a mitigation bank that provides similar ecological values to those impacted at Crow Creek, or other action acceptable to CDFW.

Temporary disturbance to upper streambank with or without vegetative cover or understory, with woody vegetation with stems no greater than 4 inches in diameter: 1:1

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Permanent disturbance to vegetated or unvegetated streambank (rock slope protection and concrete outfall structures): 3:1

Permanent disturbance to vegetated or unvegetated streambank with gabion installation: 6:1

Permanent removal of non-native trees larger than 4" dbh: 1:1 (with native trees)

Permanent removal of native trees larger than 4" dbh: 3:1

The Plan shall also address Measures 2.41 and 2.42 below.

- 2.42 Native Grass Seeding. Permittee shall place erosion protection in areas where vegetation cannot reasonably be expected to become re-established. All other areas of disturbed soil which drain toward the stream shall be planted with propagules (seeds, cuttings and/or divisions) of locally occurring native plants. Locally native wildflower and/or shrub seeds may also be included in the seed mix.
- 2.43 Seeding and Planting Time Period. Permittee shall complete seeding and planting of disturbed areas as soon as possible after Project activities in those areas cease.
- 2.44 Prohibited Plant Species. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: <http://www.cal-ipc.org/paf/>.
- 2.45 Use of Nursery Stock for Plantings. If nursery stock purchased for revegetation was grown within a county that is quarantining or regulating nursery stock for interstate sales due to the presence of *Phytophthora ramorum*, the source nursery shall be in compliance with annual inspections under 7 CFR 301.92 et. seq. Permittee shall view the California Department of Food and Agriculture (CDFA) website to view the most recent list of approved nurseries from quarantined and regulated counties, found at <https://www.cdfa.ca.gov/plant/pe/InteriorExclusion/SuddenOakDeath/>. Permittee shall view, and if possible obtain, a copy of the annual inspection certificate under 7 CFR 301.92-f et. seq. regarding *P. ramorum* (<http://www.sudden oak death.org/diagnosis-and-management/hosts-and-symptoms/>). If a selected nursery cannot provide this annual certificate of inspection, the nursery shall not be used as a source for plant material, soils or other materials that could transmit the disease organism.
- 2.46 Sudden Oak Death Protocol. Permittee and all contractors shall follow sanitation protocol specified in the *Sanitation Guidelines for Professional Crews* issued by the California Oak Mortality Task Force (<http://www.sudden oak death.org/diagnosis-and-management/sanitation-and-reducing-spread/>) prior to entering, during construction, and prior to leaving the site.

- 2.47 Remove Temporary Flagging, Barriers and Materials. Permittee shall remove all temporary flagging, barriers and other materials such as sand or gravel bags from the project site and vicinity of the stream upon completion of project activities.
- 2.48 Site Restoration/Stabilization Success. To ensure that site restoration and erosion control measures are successful, Permittee shall be required to monitor site conditions and success criteria per the Final Approved Vegetation Restoration Plan.

3. Reporting Measures

Permittee shall meet each reporting requirement described below, and shall include the notification number when submitting all reports and plans to CDFW.

- 3.1 Notification to the California Natural Diversity Database. If any listed, rare, or special status species are detected during project surveys or on or around the project site during project activities, the Permittee shall submit CNDDDB Field Survey Forms to CDFW in the manner described at the CNDDDB website (<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>) within five working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.
- 3.2 Status Reports. Permittee shall submit a status report on revegetation and restoration (see Measure 2.41) success to CDFW by January 31 of the three years following construction. The report shall include the following: i) monitoring results (including methods and a discussion of modifications since the previous monitoring period); ii) evaluation of conditions relative to success criteria; iii) remedial measures identified and implemented following the previous monitoring period; iv) status of pools and observed native or invasive biota present in the first spring or summer after construction; v) overall site progress; and vi) any signs of channel erosion, scour or bank failure. Any proposed changes to the performance criteria or timelines shall require CDFW written approval. The report shall include photos from designated photo stations at each mitigation site. In the event that restoration has not been completed to the satisfaction of CDFW, monitoring and reporting shall continue on a schedule developed by CDFW until success criteria are reached.
- 3.3 Photographic Documentation of Work. Prior to commencement of work, the Permittee shall flag vantage points at all four retaining walls that offer representative views of the project site and work areas. The Permittee shall photograph the project area from each of the flagged points, noting the direction and magnification of each photo. Upon completion of construction, the Permittee shall photograph post-project conditions from the flagged photo points using the same direction and magnification as pre-project photos. Labeled digital copies of pre- and post-project photographs shall be sent to CDFW within thirty (30) days of completion of the project.

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CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

To Permittee:

Jim Browne
Alameda County Public Works Agency
EPIMS-ALA-15171-R3
Crow Canyon Roadway Shoulder Repairs Project

To Permittee:

Department of Fish and Wildlife
Bay Delta Region
EPIMS-ALA-15171-R3
Crow Canyon Roadway Shoulder Repairs Project
EPIMS.R3@wildlife.ca.gov and Serge.Glushkoff@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

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ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the project or an activity related to it. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall log into EPIMS and submit to CDFW a completed CDFW "Amendment & Extension" form. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

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This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall log into EPIMS and submit to CDFW a completed CDFW “Amendment & Extension” form. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW’s current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement’s term. To request an extension, Permittee shall log into EPIMS and submit to CDFW a completed CDFW “Amendment & Extension” form. Permittee shall include with the completed form, payment of the extension fee identified in CDFW’s current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW’s signature, which shall be: 1) after Permittee’s signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on December 31, 2025, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

EXHIBITS

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The documents listed below are included as exhibits to the Agreement and incorporated herein by reference; however the Project Description represents the final dimensions of RSP and gabion baskets.

- A. Exhibit A. *Plans for Storm Damage Repairs Along Crow Canyon Road* (Pages 1-18), December 2020
- B. Exhibit B. *Crow Canyon Road at Various Locations – Plan and Profiles for Culver Replacement* (4 Pages), July 2021 PRE-FINAL

C. AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

CONCURRENCE

Through the electronic signature by the permittee or permittee's representative as evidenced by the attached concurrence from CDFW's Environmental Permit Information Management System (EPIMS), the permittee accepts and agrees to comply with all provisions contained herein.

The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.