

**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**

399 Elmhurst Street • Hayward, CA 94544-1395
(510) 670-5480

September 16, 2008

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street, Oakland, CA 94612

Dear Board Members:

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN ZONE 7 (PRINCIPAL: JILL DUERIG, GENERAL MANAGER; LOCATION: LIVERMORE, CA) AND THE COUNTY OF ALAMEDA PUBLIC WORKS AGENCY FOR PROVISION OF FLOOD CONTROL MAINTENANCE SERVICES, FOR THE PERIOD OF OCTOBER 1, 2008 THROUGH JUNE 30, 2009, IN THE AMOUNT OF \$350,000

RECOMMENDATION:

Approve and authorize the President of the Board to execute a Memorandum of Understanding (MOU) between ZONE 7, (Principal: Jill Duerig, General Manager; Location: Livermore, CA) and the County of Alameda Public Works Agency for the provision of flood control maintenance services to ZONE 7 for the period of October 1, 2008 through June 30, 2009, in the amount not to exceed \$350,000.

SUMMARY/DISCUSSION:

Since 1998, the Alameda County Public Works Agency (ACPWA) has been contracted to provide flood control maintenance services to ZONE 7. On July 8, 2008, the Board approved a three (3) month extension to the MOU between ACPWA and ZONE 7 to renegotiate MOU terms and continue to provide flood control maintenance services in the amount of \$100,000. During this extension period, the ACPWA and ZONE 7 succeeded in renegotiating the MOU terms. However, flood control maintenance service charges have not been fully realized during the three (3) months contract extension. To date, ACPWA has billed approximately \$50,000 of the \$100,000, leaving a balance of \$50,000. Zone 7 and ACPWA agreed to incorporate the remaining balance with the new contract. On September 18, 2008, ZONE 7's Board of Directors approved the MOU which included new service terms as-needed for flood service maintenance.

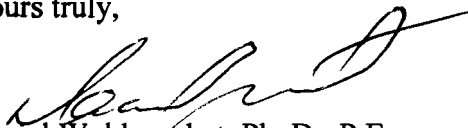
SELECTION CRITERIA AND PROCESS:

The MOU between ZONE 7 and ACPWA was initiated and developed by ZONE 7. On May 12, 1998, the Board approved an MOU with ZONE 7 and ACPWA for the period of July 1, 1998 through June 30, 1999 which has been extended annually. In August 2008, ACPWA and ZONE 7 successfully renegotiated new terms and agreements under a new MOU. ZONE 7 did not obtain bids from other service providers.

FINANCING:

There is no Net County Cost as a result of this action. ZONE 7 shall reimburse ACPWA for actual costs, both direct and indirect costs.

Yours truly,



Daniel Woldesenbet, Ph. D., P.E.
Director of Public Works

Attachments

c: Susan S. Muranishi, County Administrator
Patrick O'Connell, Auditor-Controller
Richard E. Winnie, County Counsel
Jill Duerig, Zone 7 General Manager

AGREEMENT BETWEEN
ZONE 7 AND THE COUNTY OF ALAMEDA PUBLIC WORKS AGENCY

WHEREAS, it has been determined by the Board of Directors of ZONE 7 (hereinafter referred to as Zone 7 BOARD) that it is necessary to secure all labor, material, equipment, transportation and services to be used and employed in the maintenance and emergency work for flood control facilities within the Zone 7 service area;

THEREFORE, ZONE 7 of Alameda County Flood Control and Water Conservation District (hereinafter referred to as ZONE 7) and the County of Alameda, acting by and through the Alameda County Public Works Agency (hereinafter referred to as ACPWA) do hereby agree as follows:

1. ACPWA shall undertake maintenance and emergency work as specified in Exhibit A. Such work shall be conducted in a skillful, efficient, effective and substantial manner to the satisfaction of ZONE 7 in accordance with ZONE 7's standard specifications, and/or the standard of quality normally observed in the construction industry.
2. Zone 7 shall reimburse ACPWA for ACPWA's actual costs in an amount not-to-exceed \$400,000 for the 12-month period from July 1, 2008 to June 30, 2009 (including \$100,000 from the approved 3-month extension ending September 30, 2008 Contract #C-2008-102). ACPWA shall provide and supply all necessary labor, supervision, machinery, equipment, and supplies necessary to carry out the Scope of Work. In the event subcontractors or additional construction materials be necessary, they will be treated as part of the work force, equipment and material provided by ACPWA. No additional markup on subcontractor's and material supplier's invoices will be allowed.
3. ACPWA shall deliver to ZONE 7 within thirty (30) days after the close of each calendar month, an itemized invoice for services provided during said month, and ZONE 7 shall pay ACPWA within thirty (30) days after date of said invoice.
4. The Agreement shall begin upon execution by both parties and terminate on June 30, 2009. The Agreement may be extended on a yearly basis thereafter upon written amendment to this agreement by both parties. ZONE 7 may terminate this Agreement by providing ninety (90) days written notice to the Director of ACPWA. In the event of such termination, ACPWA shall be compensated for such services up to the point of termination. If ACPWA terminates its services to Zone 7, it is required to provide written notice no less than ninety (90) days prior to termination. Such notice shall be sent to the

General Manager of ZONE 7. For Agreement extensions, ACPWA shall indicate to ZONE 7 in writing, no later than March 1, 2009 and March 1st of each year thereafter, whether it intends to extend the Agreement by one (1) year. Subject to the approval of the Zone 7 BOARD and upon written agreement of both parties, the Agreement shall be extended for one (1) year effective July 1 of the same year.

5. ZONE 7 reserves the right to retain other contractors to perform any ZONE 7 maintenance work as determined by ZONE 7.
6. ACPWA agrees to defend, indemnify, and hold harmless ZONE 7, its officers, employees and agents, from any and all acts, claims, omissions, liabilities, and losses by whomever asserted arising out of acts or omissions of ACPWA in the performance of the scope of work except those arising by reason of the sole negligence of ZONE 7, its officers, employees or agents.
7. ZONE 7 agrees to defend, indemnify, and hold harmless ACPWA, its officers, employees and agents, from any and all acts, claims, omissions, liabilities, and losses by whomever asserted arising out of acts or omissions of ZONE 7 in the performance of the scope of work except those arising by reason of the sole negligence of ACPWA, its officers, employees or agents.
8. Any damage to ZONE 7's property or facilities arising out of ACPWA's negligence or willful misconduct in performance of services, shall be repaired or remedied by ACPWA or at ZONE 7's discretion, by ZONE 7 and all costs associated therewith shall be at ACPWA's sole cost and expense.
9. In the performance of services, ACPWA shall at all times comply with any and all applicable State, Federal or local regulations including but not limited to Regional Water Quality Control Board, California Department of Fish and Game, Bay Area Air Quality Management District, CalOSHA and EPA regulations.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their respective authorized officers.

Date: _____

THE COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY

By: _____
President, Board of Supervisors

Approved as to Form
RICHARD E. WINNIE, County Counsel

By: Corey Beaman

ZONE 7 OF ALAMEDA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT

By: _____


General Manager

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the Alameda County Flood Control and Water Conservation District by a majority vote of the Board on _____, and that a copy has been delivered to the President as provided by Government Code Section 25103.

Date: _____

ATTEST:

Clerk, Board of Supervisors,
County of Alameda, State of California

SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

EXHIBIT A

SCOPE OF WORK

1. ACPWA shall supply all qualified labor, equipment and material to be used for maintaining and operating ZONE 7's flood control system for the following activities:
 - Chemical weed control
 - Litter and graffiti removal
 - Drainage structure (inlet, cross drain, outfall) cleaning and repair
2. ACPWA may also supply on an as-needed-basis, when not in conflict with its annual work plan, all qualified labor, equipment and material to be used for maintaining and operating ZONE 7's flood control system, including but not limited to the following:
 - Mechanical weed control
 - Debris and silt removal and disposal
 - V-ditch (asphalt/earthen) construction. Cleaning and repair of all types of V-ditches.
 - Access road grading and aggregate rock placement
 - Asphalt and cement concrete driveway placement and repair
 - Light tree trimming and removal (that does not require the use of bucket trucks or climbing). Trimming and removal of brush and ground covers.
 - Fence, gate, bollards, and signs, repair and removal
3. Upon written work requests submitted by ZONE 7 and prior to undertaking the requested work, ACPWA's representative will confer with ZONE 7's General Manager or his/her designee, to confirm the location and schedule for work to be performed. ACPWA will use job numbers assigned by ZONE 7 for each activity performed. When ACPWA will be working in the ZONE 7 flood control system, ACPWA shall report to ZONE 7 by 9:00 a.m. of each day via email or by phone to confirm the location and scope of such work. ACPWA shall furnish to ZONE 7 by the second week of each month a report of the previous month's progress, including time reports for employees, equipment and materials used.
4. ACPWA shall have a "local presence" (e.g., Santa Rita Corporation Yard) and respond to citizen's complaints, investigate, and take appropriate action as necessary for work

performed by ACPWA. ACPWA shall notify listed adjacent neighbors prior to spraying along the ZONE 7 facilities.

5. ACPWA may also provide ZONE 7 emergency response and flood watch under the direction of ZONE 7's General Manager or his/her designee including non-working hours as long as it does not hinder emergency response within ACPWA's own infrastructure.
6. ZONE 7 and ACPWA will jointly establish an annual work plan and budget by March 31st for the following year's contract. In addition, ZONE 7 shall submit to ACPWA a prioritized list of work requests for each month.