

RESOLUTION NO. _____

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SANTA ROSA AND THE SONOMA COUNTY WATER AGENCY TO CONTINUE THE CREEK STEWARDSHIP PROGRAM THROUGH FISCAL YEAR 2018/2019 AND AUTHORIZING THE USE OF STORM WATER ENTERPRISE FUNDS FOR THIS PURPOSE

WHEREAS, many impacts along creeks would go unreported for long periods of time without an organized community involvement program for creeks; and

WHEREAS, staff in the Utilities, Transportation & Public Works, Recreation and Parks and Police Departments have identified the Creek Stewardship Program as a means to help achieve the City Council's goal of creek protection through a combination of community volunteer work and scheduled educational activities; and

WHEREAS, the current Creek Stewardship Program consists of water-quality related creek restoration efforts, reduction of erosion and water quality degradation, and inspecting of surface water, storm water, storm drainage and flood control facilities, all to preserve and enhance the public health, safety and welfare and the quality of life of the citizens of Santa Rosa as identified in Title 16 of the Santa Rosa City Code which established a storm water enterprise fund; and

WHEREAS, the current work plan for the City of Santa Rosa and Sonoma County Water Agency under the Municipal National Pollutant Discharge Elimination System permit for storm water discharges from the Santa Rosa area requires extensive educational outreach and addressing pollutants of concern; and

WHEREAS, the Citywide Creek Master Plan adopted by the City Council includes encouraging community use of creeks; and

WHEREAS, the Sonoma County Water Agency staff supports continuing the partnership with the City of Santa Rosa that jointly funds a full time Environmental Specialist position in the Utilities Department to coordinate the Creek Stewardship Program along creeks within Santa Rosa that drain to the Laguna de Santa Rosa, pending approval from the Sonoma County Water Agency Board of Directors; and

WHEREAS, the City of Santa Rosa desires to enter into a new agreement to continue implementation of the Creek Stewardship Program with the Sonoma County Water Agency through fiscal 2018/2019; and

WHEREAS, there is sufficient revenue within the City's Storm Water Enterprise budget to continue the Program and sustain the existing Environmental Specialist position with joint funding from the Sonoma County Water Agency.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa approves the Agreement for Funding and Joint Implementation of Creek Stewardship Program (FY 2013/2014 – FY 2018/2019) (Agreement), attached hereto as Exhibit A, for continuation of the Creek Stewardship Program.

BE IT FURTHER RESOLVED that the Council authorizes the Director of Utilities to execute the Agreement with the Sonoma County Water Agency through fiscal year 2018/2019, contingent upon approval of funding from the Sonoma County Water Agency Board of Directors.

BE IT FURTHER RESOLVED that the Council authorizes the use of the Storm Water Enterprise creek restoration funds (Fund 1672) for implementing the Creek Stewardship Program.

IN COUNCIL DULY PASSED this _____ day of _____, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney

Attachment: Exhibit A - Agreement for Funding and Joint Implementation of Creek Stewardship Program (FY 2013/2014 – FY 2018/2019)

"Working Today for Water Tomorrow"

The Sonoma County Water Agency's Integrated Management Policy for ISO 9001 and 14001 states that we are committed to always improving, achieving customer satisfaction, total regulatory compliance, environmental stewardship, and resource management.

**Agreement for
Funding and Joint Implementation of
Creek Stewardship Program
(FY 2013/2014 - FY 2018/2019)**

This agreement ("Agreement") is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California ("Water Agency") and **City of Santa Rosa**, a municipal corporation ("City").

RECITALS

- A. The Santa Rosa Creek Master Plan (adopted in 1993 by the Santa Rosa City Council, the Sonoma County Board of Supervisors, and the Water Agency Board of Directors) includes goals for 1) encouraging community use of creeks to learn about natural processes and habitat, 2) caring for the creeks through adopt-a-stream programs, and 3) providing docent-guided walks.
- B. City reaffirmed its commitment to engage citizens in the care of creeks with adoption of the Santa Rosa City-wide Creek Master Plan in 2007.
- C. The Water Agency and City have implemented the Creek Stewardship Program (Program) since 2002, through two previous Joint Funding Agreements. A description of the Program is attached as Exhibit A, and a map of the Program area is attached as Exhibit B.
- D. Based on the Program's success, Water Agency and City would like to implement another six years of the Program.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
 - a. Exhibit A: Description of Creek Stewardship Program
 - b. Exhibit B: Map of Creek Stewardship Program Priority Program Area

3. COMMUNICATION/DESIGNATED REPRESENTATIVES

- 3.1. *Communication and Contact Information:* The persons designated below shall, upon execution of this Agreement, have authority to grant discretionary approvals identified in this Agreement. Contact information and mailing addresses:

Water Agency	City
Project Manager: Jon Niehaus	Contact: Alistair Bleifuss
404 Aviation Boulevard	69 Stony Circle
Santa Rosa, CA 95403-9019	Santa Rosa, CA 95401
Phone: 707-521-1845	Phone: 707-543-3845
Email: Jon.Niehaus@scwa.ca.gov	Email: ableifuss@srcity.org

4. WATER AGENCY RESPONSIBILITIES

- 4.1. *Total Obligation:* Water Agency's total obligation under this Agreement shall not exceed \$486,000.
- 4.2. *Payments:* Water Agency will pay the amounts shown in Section 6, Payment Table for services to be performed by the City as described in Section 4 (Work Plan) of Exhibit A.
- 4.3. *Invoices:* Water Agency shall invoice the City in arrears on a quarterly basis for costs authorized under this Agreement. Invoices submitted to City by Water Agency shall be clearly marked with "Sonoma County Water Agency, Creek Cleanups, and Account No. 1046-69."
- 4.4. *Availability of Funding in Subsequent Fiscal Years:*
 - a. Water Agency's performance under this Agreement in subsequent years is contingent upon appropriation of funds by Water Agency's Board of Directors. Water Agency shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Water Agency's Board of Directors for the purpose of this Agreement. Amount of funding planned for appropriation for this Agreement is shown in Section 6, Payment Table.
 - b. If funding for this Agreement for any fiscal year is reduced or eliminated by Water Agency's Board of Directors, Water Agency shall have the option to either terminate this Agreement in accordance with Article 9 (Termination) or offer an amendment to City to reflect the reduced amount.

5. **CITY RESPONSIBILITIES**

- 5.1. *Total Obligation:* City's total obligation under this Agreement shall not exceed \$255,000.
- 5.2. *Payments:* City will pay the amounts shown in Section 6, Payment Table, for 30 days per year of creek maintenance work performed by Supervised Adult Crews on City creeks designated by City. Supervised Adult Crews contracted by the Water Agency will perform the work.
- 5.3. *Invoices:* City shall invoice the Water Agency in arrears on a quarterly basis for costs authorized under this Agreement. Invoices submitted to Water Agency by City shall be clearly marked with "City of Santa Rosa, Funding of Creek Stewardship Program," Project/Task No. 3899-06 and Account No. 673202-6180."
- 5.4. *Availability of Funding in Subsequent Fiscal Years:*
- a. City's performance under this Agreement in subsequent years is contingent upon appropriation of funds by the City Council. City shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by the City Council for the purpose of this Agreement. Amount of funding planned for appropriation for this Agreement is shown in Section 6, Payment Table.
 - b. If funding for this Agreement for any fiscal year is reduced or eliminated by the City Council, City shall have the option to either terminate this Agreement in accordance with Article 9 (Termination) or offer an amendment to Water Agency to reflect the reduced amount.
- 5.5. *Records:* City shall maintain complete and accurate records of all transactions in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records shall be available to the Water Agency at all reasonable times for inspection and analysis.

6. **PAYMENT TABLE**

APPROPRIATIONS ANTICIPATED		
Fiscal Year	Water Agency Budget for City Services	City Budget Available for Water Agency Services
2013/2014	\$ 76,000	\$ 40,000
2014/2015	\$ 78,000	\$ 41,000
2015/2016	\$ 80,000	\$ 42,000
2016/2017	\$ 82,000	\$ 43,000
2017/2018	\$ 84,000	\$ 44,000
2018/2019	\$ 86,000	\$ 45,000
Total	\$486,000	\$255,000

7. **TERM OF AGREEMENT**

7.1. The term of this Agreement shall be from July 1, 2013 (“Effective Date”) to June 30, 2019, unless terminated earlier in accordance with the provisions of Article 9 (Termination).

8. **TERMINATION**

- 8.1. *Termination Without Cause:* Either party may terminate its participation in this Agreement by giving twelve (12) months advance written notice to the other party of its intent to terminate its participation in this Agreement.
- 8.2. *Termination for Non-Appropriation:* Either party may terminate this Agreement at any time, upon giving thirty (30) days written notice to the other party, for any of the following reasons:
- a. Either party has exhausted all funds legally available for payments to become due under this Agreement;
 - b. Funds which have been appropriated for purposes of this Agreement are withheld and are not made available to either party;
 - c. No appropriation of funds for payments has been made for purposes of this Agreement in the budget for the next fiscal year; or
 - d. An appropriation of funds for the next fiscal year has been made for purposes of this Agreement, but prior to actual release, such appropriation has been withdrawn.
- 8.3. *Authority to Terminate:* Water Agency’s right to terminate may be exercised by Water Agency’s General Manager. City’s right to terminate may be exercised by the City’s Director of Utilities.

9. MUTUAL COOPERATION

9.1. City and the Water Agency shall cooperate throughout the life of this Agreement. In the event any provision in this Agreement needs interpretation or clarification, the parties shall exercise good faith efforts to resolve the matter. If staff is unable to reach an agreement, then the Water Agency's General Manager and the City's Director of Utilities, or their designees, shall meet and endeavor to reach an agreement. If a mutually acceptable agreement is reached, City and Water Agency shall put into writing any mutually agreed interpretation or clarification.

10. MUTUAL INDEMNIFICATION

10.1. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

11. EXTRA OR CHANGED WORK

11.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Water Agency's General Manager and by the City's Director of Utilities in a form approved by County Counsel and the City Attorney.

12. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

12.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as specified in Paragraph 3.1.

12.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a

written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 13.

13. ADDITIONAL REQUIREMENTS

- 13.1. *No Bottled Water:* In accordance with Water Agency Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Water Agency funding shall be used to purchase single-serving, disposable water bottles for use in Water Agency facilities or at Water Agency-sponsored events. This restriction shall not apply when potable water is not available.
- 13.2. *No Waiver of Breach:* The waiver by Water Agency or City of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 13.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. City and Water Agency acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and Water Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 13.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 13.5. *No Third-Party Beneficiaries:* Except as provided in Article 10 (Mutual Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 13.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.

- 13.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 13.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 13.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 13.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to substance:

By: _____
Water Agency General Manager

Reviewed as to funds:

By: _____
Water Agency Division Manager -
Administrative Services

Approved as to form:

By: _____
County Counsel

Approved as to form:

By: _____
City Attorney

City of Santa Rosa

By: _____
David Guhin, Director of Utilities

Date: _____

Attest:

By: _____
City Clerk

Sonoma County Water Agency

By: _____
Chair, Board of Directors

Date: _____

Attest:

By: _____
Clerk of the Board

Exhibit A

Description of Creek Stewardship Program

1. **BACKGROUND**

- 1.1. The Santa Rosa Creek Master Plan (adopted in 1993 by the Santa Rosa City Council, the Sonoma County Board of Supervisors, and the Water Agency Board of Directors) includes goals for 1) encouraging community use of creeks to learn about natural processes and habitat, 2) caring for the creeks through adopt-a-stream programs, and 3) docent-guided walks.
- 1.2. The Santa Rosa City-wide Creek Master Plan reaffirms the goals listed in paragraph 1.1, above, and applies these goals to all creeks within the City's Urban Growth Boundary.
- 1.3. An informed, supportive, and proactive citizenry will help the City and Water Agency protect water quality, identify maintenance needs, and enhance the many benefits creeks provide to the community.

2. **GOAL**

- 2.1. Implement, support, and realize the benefits of a successful Creek Stewardship Program that maximizes community involvement to help restore, maintain, and protect creeks.

3. **OBJECTIVES**

- 3.1. Increase citizens' awareness of the values provided by the creeks within the Program area by providing creek restoration, education, and recreation activities in conjunction with local community and environmental organizations.
- 3.2. Recruit and train volunteer Creek Stewards to help maintain and enhance creeks.
- 3.3. Provide timely and effective response to citizens' concerns regarding creek related maintenance, environmental, safety, and recreational issues.
- 3.4. Designate a Program Coordinator to organize volunteers, coordinate educational and recreational activities, facilitate City and Water Agency cooperation, and integrate the expertise and resources offered by community organizations into the Program.

4. **WORK PLAN**

- 4.1. The City's Utilities Department shall hire and supervise a Program Coordinator with a full time classification of Environmental Specialist. Half of the Program Coordinator's hours will be dedicated to Program development and implementation on Water Agency-maintained channels. Program Coordinator shall meet with Water Agency staff on a bi-weekly basis.

- 4.2. The City and Program Coordinator shall:
- a. Work with the Water Agency to identify and prioritize creek areas requiring attention
 - b. Coordinate activities with Water Agency storm water and water education programs and City departments such as Recreation and Parks, Police, Transportation and Public Works, and Community Development
 - c. Develop materials for volunteer Creek Stewards including agreements, liability releases, contact lists pertaining to the jurisdiction of each particular reach of creek, logbooks, and guidelines for procedures and safety. Materials will contain City and Water Agency contact information and/or logos.
 - d. Develop a Creek Steward training manual that includes maps and educational materials on creek related topics such as history, hydrology, and natural history; provide a hard copy and an electronic copy of training manual to Water Agency.
 - e. Recruit Creek Stewards who will:
 - i. "adopt" and care for a specific reach of creek with public access, in their neighborhood, or fronting a business.
 - ii. participate as individuals or represent neighborhoods, groups or businesses.
 - iii. perform minor maintenance and monitoring tasks such as picking up litter, removing non-native invasive plants, clearing trails of debris, and caring for restoration areas.
 - iv. participate in work days for maintenance and restoration projects.
 - v. provide suggestions to enhance creek areas.
 - vi. follow formulated procedures to alert the City or Water Agency to problems associated with creeks.
 - f. Train Creek Stewards to recognize and report undesirable conditions such as water pollution, habitat degradation, and unlawful activities.
 - g. Supervise Creek Stewards and other volunteer activities.
 - h. Promote the Program, including providing recognition of Water Agency participation through placement of Water Agency's name, and/or logo on publicity materials, and acknowledging Water Agency's partnership at public events. Provide Water Agency with hard copy and electronic copy (reasonably available) of publicity materials.
 - i. Develop and sponsor recreational and educational opportunities for the community to increase citizens' appreciation and support for the environmental, economic, and social benefits provided by creeks. Activities may include walks, bike rides, nature interpretation, youth summer camps, tree planting, restoration work days, and presentations on creek topics.
 - j. Utilize the community's expertise and resources to organize and maximize opportunities for restoration, education, and recreation.

- k. Suggest to Water Agency content and location of interpretive and warning signage for Water Agency channels that provides information on creek-related topics such as the proper management of pet waste, prohibited activities, geography, history, aquatic life, plants, and watershed processes.
 - l. Follow up on reports regarding trash, water pollution, natural habitat, trail maintenance, flooding concerns, neighborhood safety, graffiti, homeless encampments, and other situations that arise.
 - m. Facilitate communication between the various government services responsible for creeks and assist in the formulation of effective means for preventing and resolving problems.
 - n. Provide recordkeeping and reports.
 - o. Apply for and obtain all permits and authorizations necessary to perform services contemplated by this Work Plan.
 - p. Comply with all applicable environmental laws and regulations.
- 4.3. The Water Agency currently utilizes full time Supervised Adult Crews on channels that are under the Water Agency's maintenance responsibility. During the term of this agreement, Supervised Adult Crews will work on City creeks for up to 30 days per year to perform clean up, trail repair, revegetation work, and other maintenance along creeks that are not currently the responsibility of the Water Agency for FY 2013/2014 through 2018/2019.
- 4.4. The Program's priority area for half of the Program Coordinator's hours will be Water Agency-maintained channels within the City urban boundary and any extensions of those channels beyond the boundary, either upstream to the headwaters or downstream to the Laguna de Santa Rosa (Exhibit B). Other Water Agency-maintained channels flowing to the Laguna de Santa Rosa will be incorporated into the Program as the Water Agency determines half time resources allow.
- 4.5. Yearly Report:
- a. City shall submit 2 copies of a yearly report at the end of each fiscal year. The report shall include the following:
 - i. Table of Contents.
 - ii. Summary of activity results.
 - iii. A description of the work performed, including methodology.
 - iv. Other information as may be requested by Water Agency to support the efficacy of the Creek Stewardship Program.

Exhibit B

Map of Creek Stewardship Program Priority Program Area

