

Attachment 1

Laguna de Santa Rosa Bridge Replacement
Off-site Mitigation Project
EA No. 04-1A2903
EFIS No. 0400000482
SON-12-PM 9.6/9.6
Cooperative Agreement No. 04-2514

COOPERATIVE AGREEMENT

This AGREEMENT, effective on _____, 2021, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "CALTRANS," the

SONOMA RESOURCE CONSERVATION DISTRICT, a government special district, referred to herein as "SRCD," and the

CITY OF SANTA ROSA, a body politic and municipal corporation of the State of California, referred to herein as "CITY."

RECITALS

1. CALTRANS, SRCD and CITY, hereinafter collectively referred to as "PARTIES," pursuant to California Streets and Highways Code sections 114 and/or 130, are authorized to enter into this Agreement.
2. CALTRANS is replacing the Laguna De Santa Rosa Bridge No. 20-0035 at PM 9.6 on State Route 12 (SR 12) in Sebastopol, in Sonoma County, referred to herein as PROJECT.
3. Pursuant to consultation with the California Department of Fish and Wildlife, Lake and Streambed Alteration Agreement No. 1600-2012-0159-3, dated January 16, 2013, was issued for PROJECT, referred to herein as LSAA 1600 and attached hereto as Exhibit A.
4. Pursuant to consultation with the California Regional Water Quality Control Board-North Coast Region ("NCRWQCB"), Water Quality Certification No. 1B12122WNSO, dated February 7, 2013, was issued for PROJECT disturbances to the waters of the United States and waters of the State associated with the Russian River Hydrologic Unit No. 1114. Water Quality Certification No. 1B12122WNSO is referred to herein as 401 CERTIFICATION and is attached hereto as Exhibit B.
5. CALTRANS desires to enter into this Agreement in order to satisfy Condition 3.2 of the LSAA 1600 and Condition 32(ii) of the 401 CERTIFICATION, hereinafter referred to collectively as PERMIT CONDITIONS.

6. Specifically, CALTRANS desires to have SRCD satisfy the PERMIT CONDITIONS by implementing the Laguna de Santa Rosa Off-site Mitigation Project Proposal on a portion of property that is owned by the CITY, hereinafter referred to as MITIGATION PROJECT. A copy of the Laguna de Santa Rosa Off-site Mitigation Project Proposal is attached hereto and incorporated herein as Exhibit C. Photographs which depict the specific portion of the CITY's property, commonly known as Brown Farm, on which the Santa Rosa Off-site Mitigation Project Proposal will be implemented on, is attached hereto and incorporated herein as Exhibit D, and such location will hereafter be referred to as the PROJECT SITE.
7. As set forth in Exhibit A-1 and Exhibit B-1, which are attached hereto and incorporated herein, CDFW and NCRWQB have agreed that the implementation of MITIGATION PROJECT will satisfy PERMIT CONDITIONS.
8. PARTIES agree that the total cost of SRCD completing MITIGATION PROJECT on CITY property is \$380,000.00.
9. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to MITIGATION PROJECT.
10. PARTIES now define herein below the terms and conditions under which this Agreement will be implemented.

SECTION I

SRCD AGREES:

1. To satisfy PERMIT CONDITIONS by ensuring all of the work described in the Laguna de Santa Rosa Off-site Mitigation Project Proposal and herein this Agreement, is completed.
2. All work performed by SRCD, or performed on SRCD's behalf, shall be performed in accordance with all state and federal laws, regulations, policies, procedures, and standards, as well as the existing conservation easement in favor of the Sonoma County Agricultural Preservation and Open Space District, referred to herein as CONSERVATION EASEMENT, and attached hereto as Exhibit E, and the settlement with California River Watch referred to herein as SETTLEMENT and attached hereto as Exhibit F. Further, SRCD shall take all steps necessary to assure that the performance of such work is in compliance with all permits, applicable covenants and restrictions on the CITY property and applicable law, including but not limited to the Endangered Species Act and the protection of California Tiger Salamander habitat as well as other protected species.

3. To coordinate any and all work with CITY staff, including but not limited to providing a proposed staging plan for prior approval by CITY, to allow CITY staff oversight of any work to be performed on CITY's property to comply with these requirements.
4. To obtain any and all necessary property rights and/or rights of entry required to complete the MITIGATION PROJECT. Said rights shall also include rights of entry for CALTRANS and resource agency personnel. SRCD shall work with CITY to obtain a license agreement in accordance with CITY requirements for any long-term encroachment onto CITY property to allow reasonable access to the PROJECT SITE, as necessary and appropriate to implement the MITIGATION PROJECT.
5. To obtain any and all environmental approvals and/or resource agency agreements, permits, and/or approvals required for MITIGATION PROJECT prior to commencement of work and to fully comply with any terms and conditions thereof.
6. To submit draft monitoring reports to CALTRANS, with a copy to CITY, for ten (10) years (with monitoring anticipated to begin in the year 2021 and end ten [10] years later, currently anticipated to be year 2030) by December 31st of each year. Said reports shall contain all of the information described in Exhibit C.
7. To address CALTRANS' comments on the draft monitoring report and thereafter submit a final draft monitoring report to CALTRANS, with a copy to CITY, by March 1st for ten (10) years (with monitoring anticipated to begin in the year 2021 and end ten [10] years later, currently anticipated to be year 2030) for CALTRANS' review and approval, if appropriate.
8. If at any time during the ten (10) year monitoring period (with monitoring anticipated to begin in the year 2021 and end ten [10] years later currently anticipated to be year 2030) it is determined that progress towards the success criteria, which success criteria is described in Exhibit C, is not being achieved then SRCD shall implement any remedial or adaptive management measures necessary to meet the success criteria.
9. To submit an initial invoice in the amount of \$200,000.00 to CALTRANS within thirty (30) days of execution of this Agreement. A second and final invoice in the amount of \$155,000 shall be submitted to CALTRANS one year after work commences on MITIGATION PROJECT. SRCD agrees that CALTRANS' total financial obligations to SRCD for completing all of the work described herein, including MITIGATION PROJECT, shall not exceed the amount of \$355,000.00.
10. All invoices submitted by SRCD shall meet the format and content requirements specified by CALTRANS and shall be submitted to the contract person identified in Section IV, article 3.
11. To submit a final report of all expenditures within ninety (90) days after completion of MITIGATION PROJECT. Any of the funds remaining on deposit after the final report

of expenditures shall be returned to CALTRANS within thirty (30) days of said accounting.

12. If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, SRCD must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7.
13. To include prevailing wage requirements in its contracts for public work. Work performed by SRCD's own forces is exempt from the Labor Code's Prevailing Wage requirements.
14. If work performed under this Agreement is done under contract, is paid for in whole or part with federal funds and is of the type of work subject to federal prevailing wage requirements, SRCD must conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. § 276(a) in addition to Labor Code provisions.
15. SRCD agrees to include federal prevailing wage requirements in its contracts for public work. Work performed by SRCD's own forces is exempt from federal prevailing wage requirements.
16. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, including support data for cost proposals, and to make such materials available at the respective offices of CALTRANS, and the CITY if requested, at all reasonable times for three (3) years after the termination date of this Agreement. CALTRANS, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of SRCD that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished when requested.

SECTION II

CITY AGREES:

1. To coordinate with SRCD for the grant of license as necessary for SRCD to implement the MITIGATION PROJECT. Further, CITY agrees that, subject to the terms, conditions and requirements of this Agreement, SRCD can implement the Laguna de Santa Rosa Off-site Mitigation Project Proposal at the PROJECT SITE, which site is a limited and specific reach of Gravenstein Creek that is identified in Exhibits C and D. Further, CITY agrees that implementation of the MITIGATION PROJECT will not conflict with the terms of the CONSERVATION EASEMENT or the SETTLEMENT.

2. To provide training and oversight on MITIGATION PROJECT to assure that SRCD is complying with the, CONSERVATION EASEMENT, SETTLEMENT, applicable covenants and restrictions on the CITY's property and applicable law.
3. To review, comment and approve, the proposed staging plan provided to CITY by SRCD before commencement of work.
4. To submit an invoice in the amount of \$25,000.00 to CALTRANS within thirty (30) days of execution of this Agreement, which amount represents CITY's total cost to provide oversight of MITIGATION PROJECT implementation.
5. To allow CALTRANS and resource agency personnel full reasonable access to the PROJECT SITE pursuant to the license agreement to be obtained by SRCD hereunder.
6. That after acceptance of the MITIGATION PROJECT by CDFW and NCRWQCB, CITY shall not intentionally remove or destroy riparian trees and shrubs planted pursuant to this Agreement. CITY further agrees that with acceptance by CDFW and NCRWQB, the MITIGATION PROJECT will be deemed incorporated into and maintained pursuant to the terms of CONSERVATION EASEMENT.

SECTION III

CALTRANS AGREES:

1. To pay SRCD within forty-five (45) days of receipt of a signed invoice, the amount of \$200,000.00, which figure represents the initial payment of the total cost of MITIGATION PROJECT. Within forty-five (45) days of receipt of the second and final signed invoice, which shall not be submitted until at least one year after commencement of work, CALTRANS will deposit with SRCD the amount of \$155,000.00. CALTRANS' total financial obligation to SRCD for the cost of MITIGATION PROJECT shall not exceed the amount of \$355,000.00.
2. To pay the CITY within forty-five (45) days of the full execution of this Agreement by PARTIES, the amount of \$25,000.00 to reimburse CITY for costs associated with approval of the MITIGATION PROJECT and use of CITY property for MITIGATION PROJECT.
3. To review and provide comments to SRCD by February 1st on the draft monitoring reports prepared by SRCD and submitted to CALTRANS for ten (10) years (with monitoring anticipated to begin in the year 2021 and end ten [10] years later, currently anticipated to be year 2030).
4. Within fourteen (14) calendar days of receipt, to review and approve, if appropriate, the draft final monitoring report submitted by SRCD to CALTRANS for ten (10) years (with monitoring anticipated to begin in the year 2021 and end ten [10] years later, currently anticipated to be year 2030).

5. CALTRANS will obtain written confirmation from CDFW and the NCRWQCB that PERMIT CONDITIONS have been met and provide a copy to SRCD and the CITY.

SECTION IV

IT IS MUTUALLY AGREED:

1. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC), provided however, that if for some reason the funds to be paid hereunder are unavailable, the CITY or SRCD may terminate this Agreement.
2. All applicable laws, rules and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this Agreement.
3. All reports, invoices or other correspondence shall be sent to the contacts listed in this article 3. The PARTIES agree to notify each other in writing of any personnel or address changes. It is further agreed that a change in contact information shall not require an amendment to this Agreement.

CALTRANS:

Lilian Acorda, Regional Project Manager
111 Grand Avenue
Oakland, CA 94612
Office Phone: (510) 290-7581
Email: lilian.a.acorda@dot.ca.gov

SRCD:

Kevin Cullinen, Project Manager
1221 Farmers Lane, Suite F
Santa Rosa, CA 95405
Office Phone: (707) 569-1448 ext. 103
Email: kcullinen@sonomarc.org

CITY:

Sean McNeil, Deputy Director Environmental Services
69 Stony Cr
Santa Rosa, CA 95401
Office Phone: (707) 543-3938
Email: smcneil@srcity.org

4. The party that discovers hazardous material (HM) will immediately notify the other party(ies) to this Agreement. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by MITIGATION PROJECT or not. HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by MITIGATION PROJECT. Management activities associated with either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
5. CALTRANS, independent of MITIGATION PROJECT, is responsible for any HM-1 found within existing State Highway System (SHS) right of way. CALTRANS will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule and will pay, or cause to be paid, all costs associated with HM-1 management activities.
6. CALTRANS has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. If HM-1 is found outside existing SHS right of way, under state and federal law responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. If HM-1 is found outside the existing SHS right of way, PARTIES will reassess the feasibility of the MITIGATION PROJECT and mutually agree on a course of action prior to the commencement of any additional work.
7. SRCD is responsible for the management of any HM-2 found within MITIGATION PROJECT limits. SRCD may use up to 5% of the funds already obligated by CALTRANS under this agreement for the costs associated with HM-2 management activities. In no event shall CITY be responsible for the management or cost of any HM-2, which shall be fully addressed prior to proceeding with completion of the MITIGATION PROJECT.
8. CALTRANS' acquisition of or acceptance of title to any property on which any hazardous material is found will proceed in accordance with CALTRANS' policy on such acquisition.
9. Neither CITY, SRCD nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY, SRCD and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability

occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this agreement.

10. Neither SRCD, CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this agreement. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless SRCD, CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, arising out of or caused by CITY's breach of its obligations hereunder.
11. Neither CITY, CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by SRCD, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon SRCD under this agreement. It is understood and agreed that SRCD, to the extent permitted by law, will defend, indemnify, and save harmless CITY, CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by SRCD, its contractors, sub-contractors, and/or its agents under this agreement.
12. In the event of any breach of this Agreement by any party, the other parties may enforce this Agreement by any means available at law or in equity. In the event of litigation, mediation or arbitration to resolve any breach of, or dispute related to this Agreement, each party agrees to pay for their own attorneys' cost and expenses, without regard to who prevails.
13. A failure by any party to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of that provision.
14. This Agreement may be executed by wet-ink signature, electronic signature or pdf signature and said signatures shall be binding all PARTIES. Further, the PARTIES agree that this Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement that shall be binding on all PARTIES, notwithstanding that all the PARTIES are not signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.
15. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

16. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement or to affect the legal liability of any party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
17. This Agreement shall terminate after CALTRANS provides a copy of CDFW's and NCRWQCB's written confirmation that PERMIT REQUIREMENTS have been met to SRCD and CITY. However, all indemnification, document retention, audit, claims, environmental, legal challenge, hazardous material, operation, maintenance, management, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.


SIGNATURES

PARTIES are empowered by CA Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

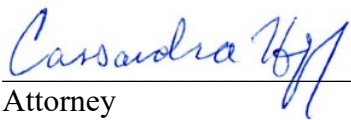
**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SONOMA RESOURCE
CONSERVATION DISTRICT**

By: _____
Helena (Lenka) Culik-Caro
Deputy District Director

By:  _____
Valerie Minton Quinto
Executive Director

Approved as to form and procedure:

 _____
Attorney
Department of Transportation

Certified as to budgeting of funds:

Jeffrey Kuehnel
District Budget Manager

CITY OF SANTA ROSA

By: _____

Title: _____

Attest:

City Clerk

Approved as to form:

Santa Rosa City Attorney's Office