

## **DRAFT Agreement for Funding and Joint Implementation of Creek Stewardship Program**

This agreement (“Agreement”) is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California (“Sonoma Water”) and **City of Santa Rosa**, (“City”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 7.1.

### **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 Sonoma Water 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 (adopted in 2007 and updated in 2013).
- C. Sonoma Water and City have implemented the Creek Stewardship Program (Program) since 2002, through three previous Joint Funding Agreements.
- D. Based on the Program’s success, Sonoma Water and City would like to implement another six years of the Program.
- E. Sonoma Water currently contracts with the Sonoma County Probation Department for Supervised Adult Crews. During the term of this agreement, Supervised Adult Crews will work on City creeks for 30 days per year to perform cleanup, trail maintenance, stream maintenance, and vegetation management on creeks that are not currently the responsibility of Sonoma Water, and City will reimburse Sonoma Water for these services.
- F. Under this Agreement, City will provide a full time Environmental Specialist position that will act as the Program Coordinator. Sonoma Water will fund half of this position, and the Program Coordinator will work half-time on stewardship programs in Sonoma Water’s Zone 1A flood control channels.

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

**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:

| <b>Sonoma Water</b>  | <b>City</b>   |
|--|---|
| Project Manager: Chase Takajo<br>404 Aviation Boulevard<br>Santa Rosa, CA 95403-9019<br>Phone: 707-521-1872<br>Email: Chase.Takajo@scwa.ca.gov | Contact: Alistair Bleifuss<br>69 Stony Circle<br>Santa Rosa, CA 95401<br>Phone: 707-543-3845<br>Email: ableifuss@srcity.org |
| <b>Remit invoices to:</b>  | <b>Remit payments to:</b>   |
| Accounts Payable<br>Same address as above or<br>Email: ap_agreements@scwa.ca.gov   | City of Santa Rosa<br>Attn: Accounts Receivable<br>PO Box 1673<br>Santa Rosa, CA 95402-1673                                 |
| <b>Remit payments to:</b>  | <b>Remit invoices to:</b>   |
| Justin Adalio<br>Same address as above   | City of Santa Rosa<br>Creek Stewardship Program<br>69 Stony Circle<br>Santa Rosa, CA 95401                                  |

**4. SONOMA WATER RESPONSIBILITIES**

- 4.1. *Total Obligation:* Sonoma Water’s total obligation under this Agreement shall not exceed \$536,000.
- 4.2. *Payments:* Sonoma Water will pay the amounts shown in Section 6, Payment Table for services to be performed by the City as described in Work Plan of Exhibit A.
- 4.3. *Invoices:* Sonoma Water shall invoice the City annually for costs authorized under this Agreement. The first invoice will be due June 30, 2020, for FY 2019-2020, and annually thereafter by June 30. Invoices submitted to City by Sonoma Water shall be clearly marked with “Sonoma County Water Agency, Creek Cleanups.”

- a. Availability of Funding in Subsequent Fiscal Years:
  - i. Sonoma Water’s performance under this Agreement in subsequent years is contingent upon appropriation of funds by Sonoma Water’s Board of Directors. Sonoma Water shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Sonoma Water’s Board of Directors for the purpose of this Agreement.
  - ii. If funding for this Agreement for any fiscal year is reduced or eliminated by Sonoma Water’s Board of Directors, Sonoma Water shall have the option to either terminate this Agreement in accordance with Article 8 (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 \$252,000.
- 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, from 330501-5320. Supervised Adult Crews contracted by Sonoma Water will perform the work.
- 5.3. *Invoices:* City shall invoice the Sonoma Water annually for costs authorized under this Agreement. The first invoice will be due June 30, 2020 for FY 2019-2020, and annually thereafter by June 30. Invoices submitted to Sonoma Water by City shall be clearly marked with “City of Santa Rosa, Funding of Creek Stewardship Program, Project/Activity Code F0106M004.”
- 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 8 (Termination) or offer an amendment to Sonoma Water 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 Sonoma Water at all reasonable times for inspection and analysis.

6. **PAYMENT TABLE**

| <b>APPROPRIATIONS ANTICIPATED</b> |  |   |
|-----------------------------------|--|---|
| <b>Fiscal Year</b>                | <b>Sonoma Water Budget for City Services</b> | <b>City Budget Available for Sonoma Water Services*</b> |
| 2019/2020                         | \$ 83,500                                    | \$ 37,500   |
| 2020/2021                         | \$ 85,000                                    | \$ 39,000   |
| 2021/2022                         | \$ 88,000                                    | \$ 40,500   |
| 2022/2023                         | \$ 90,500                                    | \$ 43,000   |
| 2023/2024                         | \$ 93,000                                    | \$ 45,000   |
| 2024/2025                         | \$ 96,000                                    | \$ 47,000   |
| <b>Total</b>                      | <b>\$536,000</b>                             | <b>\$252,000</b>  |

\* Budget includes services of Supervised Adult Crews provided under a separate agreement between Sonoma Water and Sonoma County Probation Department.

7. **TERM OF AGREEMENT AND COMMENCEMENT OF WORK**

- 7.1. *Term of Agreement:* This Agreement shall expire on June 30, 2025, unless terminated earlier in accordance with the provisions of Article 8 (Termination).
- 7.2. *Commencement of Work:* City is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

8. **TERMINATION**

- 8.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager. City's right to terminate may be exercised by the City's Director of Water.
- 8.2. *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.
- 8.3. *Termination for Non-Appropriation:* Sonoma Water may terminate this Agreement at any time, upon giving City thirty (30) days written notice, for any of the following reasons:
  - a. Sonoma Water 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 Sonoma Water;
  - 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.

## **9. MUTUAL INDEMNIFICATION**

- 9.1. Each party to this Agreement (the “Indemnifying Party”) agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the “Indemnified Party”), and the Indemnified Party’s supervisors, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party’s breach of any material term of this Agreement, or Indemnifying Party’s negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from Indemnified Party’s breach of any material term of this Agreement, or Indemnified Party’s negligence or willful misconduct in connection with the performance of this Agreement. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party’s expense, subject to the Indemnifying Party’s approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the parties hereto or their agents under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

## **10. MUTUAL COOPERATION**

- 10.1. City and Sonoma Water 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 Sonoma Water’s General Manager and the City’s Director of Water, or their designees, shall meet and endeavor to reach an agreement. If a mutually acceptable agreement is reached, City and Sonoma Water shall put into writing any mutually agreed interpretation or clarification.

## **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. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma Water’s General Manager and by the City’s Director of Water 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, U.S. Mail, courier service, or electronic means. 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 12.

**13. MISCELLANEOUS PROVISIONS**

- 13.1. *No Bottled Water:* In accordance with Sonoma Water Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Sonoma Water funding shall be used to purchase single-serving, disposable water bottles for use in Sonoma Water facilities or at Sonoma Water-sponsored events. This restriction shall not apply when potable water is not available.
- 13.2. *No Waiver of Breach:* The waiver by Sonoma Water 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 Sonoma Water 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 Sonoma Water 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 9, 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. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. 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.

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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 funds:

By: \_\_\_\_\_  
Sonoma County Water Agency  
Division Manager - Administrative  
Services

Approved as to form:

By: \_\_\_\_\_  
[Name], Deputy County Counsel

Approved as to form by City Attorney:

By: \_\_\_\_\_  
City Attorney

**Sonoma County Water Agency**

By: \_\_\_\_\_  
Grant Davis, General Manager  
Authorized per Sonoma County Water  
Agency's Board of Directors Action on May  
14, 2019  
Date: \_\_\_\_\_

**City of Santa Rosa**

By: \_\_\_\_\_  
\_\_\_\_\_, Director of Water

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk

# 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 Sonoma Water Board of Directors) includes goals for 1) encouraging the public's use of creeks to learn about natural processes and habitat, 2) caring for the creek through adopt-a-stream programs, and 3) docent-guided walks.
- 1.2. The Santa Rosa Citywide Creek Master Plan (adopted in 2007 and updated in 2013 by the City of Santa Rosa and supported by Sonoma Water) reaffirms the goals listed in 1.1 and applies them to all creeks within the City's Urban Growth Boundary.
- 1.3. The Creek Stewardship Program was established in 2002 by the City and Sonoma Water to increase the public's knowledge regarding creeks and stormwater, involve the community in caring for creeks, and encourage the reporting of problems such as illicit dumping, pollutant discharges, illegal camping, and vegetation maintenance needs.
- 1.4. In 2013, the California Stormwater Quality Association presented the Creek Stewardship Program with the "Outstanding Stormwater News, Information, Outreach and Media Award."
- 1.5. An informed, supportive, and proactive citizenry has helped the City and Sonoma Water 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 maintain, restore, and protect creeks.

### 3. **OBJECTIVES**

- 3.1. Increase residents' awareness of the values provided by the creeks within the Program area by providing outreach materials along with stewardship and educational activities in conjunction with local community, youth, and environmental organizations.
- 3.2. Recruit, train, and support volunteers to report problems and help maintain and enhance creeks.
- 3.3. Provide timely and effective response to reports regarding creek related maintenance, environmental, safety, and recreational issues.

- 3.4. Designate a Program Coordinator to organize volunteers, coordinate educational and stewardship activities, facilitate City and Sonoma Water communication and cooperation, and integrate the expertise and resources of the community into the Program.

#### **4. WORKPLAN**

- 4.1. The City's Water Department shall hire and supervise a Program Coordinator with a full-time classification of Environmental Specialist. Half of the Program Coordinator's time will be dedicated to Program implementation on channels maintained by Sonoma Water and will be spent under supervision of Sonoma Water staff
- 4.2. The Program's priority area is waterways within the City's urban boundary and any extensions of those channels upstream and downstream of the boundary, (Exhibit B). Half of the Program Coordinator's hours will be devoted to Sonoma Water's channels within this area. Assistance on other Sonoma Water maintained channels will be incorporated into the Program as half time resources allow.
- 4.3. The City and Program Coordinator shall.
  - a. Collaborate with Sonoma Water to identify and prioritize creek areas requiring attention.
  - b. Coordinate activities with Sonoma Water's Stream Maintenance, Stormwater, and Water Education Programs as well as with City entities such as Recreation and Parks, Police, Transportation and Public Works, Housing and Community Services, and Planning and Economic Development.
  - c. Promote the Program. Create and distribute outreach and educational materials. Emphasize Sonoma Water's participation through placement of Sonoma Water's name, and/or logo on outreach materials, and acknowledging Sonoma Water's partnership at public events.
  - d. Coordinate with Sonoma Water the content and location of interpretive, directional, and regulation signage that provides information on creek-related topics such as the proper management of pet waste, prohibited activities, geography, history, aquatic life, plants, watershed processes, and stream maintenance.
  - e. Develop, support, and supervise stewardship and educational opportunities for the community to increase residents' appreciation and support for the environmental, economic, and social benefits provided by creeks. Activities may include walks, bike rides, nature interpretation, youth summer camps, creek cleanups, restoration work days, and presentations on creek topics. Utilize the community's expertise and resources to organize and maximize the positive impact of activities.
  - f. Recruit and supervise Creek Stewards who:

- i. “adopt” and care for a specific reach of creek with public access, in their neighborhood, or near 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. provide suggestions to enhance creek areas.
  - g. Develop materials for volunteer Creek Stewards including agreements, liability releases, contact lists, and guidelines for procedures and safety.
  - h. Train Creek Stewards and other volunteers to recognize and report maintenance issues and undesirable conditions such as water pollution, habitat degradation, and unlawful activities.
  - i. Follow up on reports regarding trash, water pollution, natural habitat, trail maintenance, flooding concerns, neighborhood safety, graffiti, illegal camping, and other situations that arise.
  - j. Facilitate communication between the various government services responsible for creeks and assist in the formulation of effective means for preventing and resolving problems.
  - k. Comply with all applicable environmental laws and regulations. Obtain all permits and authorizations necessary to perform services contemplated by this Work Plan.
  - l. Provide recordkeeping and reports.
- 4.4. Sonoma Water currently contracts with the Sonoma County Probation Department for Supervised Adult Crews. During the term of this agreement, Supervised Adult Crews will work on City creeks for 30 days per year to perform cleanup, trail maintenance, stream maintenance, and vegetation management on creeks that are not currently the responsibility of Sonoma Water.
- 4.5. Reporting: The City shall submit an annual report that coincides with the fiscal year. The report shall include a description of the work performed and details of activities and results. Activities occurring during the calendar year will be presented in a summary report.

# Exhibit B

## Map

