

## SHC 126.1 MITIGATION AGREEMENT

This AGREEMENT, ENTERED INTO EFFECTIVE on \_\_\_\_\_, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “CALTRANS,” and the

SONOMA COUNTY REGIONAL PARKS, referred to herein as “SCRP.”

### RECITALS

1. CALTRANS and SCRП, herein referred to as “PARTIES,” pursuant to Streets and Highways Code Section 126.1, are authorized to enter into this Agreement.
2. CALTRANS has undertaken the following construction projects, herein referred to as "PROJECTS:"
  - a. The State Route 1 (SR 1) Culvert Rehabilitation Project (EA No. 04-1K730) in Sonoma County between post miles (PM) 30.8 and 40.6, RTL 5/10/23.
  - b. The SR 1 Drainage System Restoration Project (EA No. 04-1K750) in Sonoma County between PM 41.2 and 54.6, RTL 5/11/23.
  - c. The SR 1 Capital Preventative Maintenance Project (EA No. 04-1J960) in Marin County between PM 22.8-31.2 and PM 45.0-50.5, RTL 6/30/23.
  - d. The SR 1/SR 29 Rumble Strip Project (EA No. 04-4H870) in Marin County (SR 1) between PM 3.08 and 50.5 and in Napa County (SR 29) between PM 48.00 and 48.58, RTL 6/20/2017.
3. CALTRANS has determined that PROJECTS resulted in impacts to wetlands, riparian habitat, and waters of the State, hereinafter referred to as “IMPACTS.” The following regulatory agencies have issued permitting documents related to IMPACTS: California Department of Fish and Wildlife (CDFW), San Francisco Bay Regional Water Quality Control Board (RWQCB), State Water Resources Control Board (SWRCB), Sonoma County Local Coastal Program (LCP), and California Coastal Commission (CCC), hereinafter referred to as “REGULATORY AGENCIES”.
4. The following permits explicitly require compensatory mitigation for IMPACTS, and have been issued by REGULATORY AGENCIES, attached hereto as **Exhibit A** and made a part of this Agreement:

- a. EA No. 04-1K730:
  1. CDFW 1602 Lake and Streambed Alteration Agreement (EPIMS-SON-25567-R3), Mitigation Measure 3.1, issued on October 18, 2022.
  2. LCP Coastal Development Permit (CPH22-0002), issued on May 9, 2023.
- b. EA No. 04-1K750:
  1. CDFW 1602 Lake and Streambed Alteration Agreement (EPIMS-SON-27455-R3), Mitigation Measure 3.1, issued on April 19, 2023.
- c. EA No. 04-1J960:
  1. CDFW 1602 Lake and Streambed Alteration Agreement (EPIMS-MAN-28523-R3), Mitigation Measure 3.1, issued on July 6, 2023.
  2. SWRCB 401 Water Quality Certification (WDID SB23021IN), Compensatory Mitigation Condition IX.E., issued on June 15, 2023.
  3. CCC Coastal Development Permit (2-23-0300), Special Condition 4(c), issued on June 19, 2023.
- d. EA No. 04-4H870:
  1. CCC Coastal Development Permit (2-17-0018), Special Condition 2(h), issued on March 13, 2017.
5. CALTRANS, in order to meet permit requirements, must provide compensatory mitigation for a portion of IMPACTS, hereinafter referred to as "MITIGATION REQUIREMENTS." MITIGATION REQUIREMENTS differ from permits due to temporal loss and changes in scope during construction, as confirmed by REGULATORY AGENCIES via email, attached hereto as **Exhibit B** and made a part of this Agreement.
6. SCRIP owns property north of Bodega Bay along Highway 1, called the Carrington Coast Ranch Regional Park and Open Space Preserve, herein referred to as CARRINGTON PRESERVE. It is a 300+ acre parcel containing a myriad of habitats as depicted in **Exhibit C**, and over which a conservation easement has been recorded in favor of the Sonoma County Agricultural Preservation and Open Space District (the "CONSERVATION EASEMENT").

CALTRANS intends to satisfy MITIGATION REQUIREMENTS by restoring degraded drainages in the northern section of CARRINGTON PRESERVE, as depicted in **Exhibit**

**D.** The restoration and subsequent five (5) years of maintenance and monitoring are herein referred to as "MITIGATION PROJECT."

7. In order to comply with the California Environmental Quality Act (CEQA), SCRCP shall develop a CEQA compliance document for the entire CARRINGTON PRESERVE which includes MITIGATION PROJECT. CALTRANS shall act as a "Responsible Agency" for the CEQA compliance document and provide necessary oversight to SCRCP.
8. PARTIES have determined that the estimated cost of satisfying MITIGATION PROJECT is \$1,238,000.00 as described in the Scope of Work, attached hereto as **Exhibit E** and made a part of this Agreement.
9. CALTRANS shall fund MITIGATION PROJECT as described in the following table:

Transportation Project (EA No.)	Funding to MITIGATION PROJECT	Percentage
04-1K730	\$198,080.00	16%
04-1K750	\$495,200.00	40%
04-1J960	\$544,720.00	44%
Total	\$1,238,000.00	100%

10. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to MITIGATION PROJECT.
11. PARTIES now define herein below the terms and conditions under which this Agreement will be implemented.

### **SECTION I**

#### **SCRCP AGREES:**

1. All work performed by SCRCP, or performed on SCRCP's behalf, shall be performed in accordance with all state and federal laws, regulations, policies, procedures, and standards, and will be in compliance with the requirements of the CONSERVATION EASEMENT.
2. To obtain any and all necessary property rights and/or rights of entry required prior to the implementation of MITIGATION PROJECT and for full compliance with any terms and conditions thereof, including approval of the MITIGATION PROJECT by the holder of the CONSERVATION EASEMENT. Said rights of entry shall also include rights for CALTRANS personnel.

3. To act as the California Environmental Quality Act (CEQA) Lead Agency for the restoration work upon the CARRINGTON PRESERVE to be completed pursuant to this Agreement known as the MITIGATION PROJECT and to fully comply with any terms and conditions thereof. SCRPs responsibility under this section shall be with respect to the physical improvements comprising the MITIGATION PROJECT only, and shall not create any duty on the part of SCRPs to act as Lead Agency for the PROJECTS or MITIGATION REQUIREMENTS, or to ensure CALTRANS' compliance with any regulatory matter or other obligation associated with the PROJECTS generally or MITIGATION REQUIREMENTS specifically.
4. To review CALTRANS' designs of MITIGATION PROJECT within thirty (30) calendar days of receiving designs in order to determine that design features are consistent with SCRPs park design standards.
5. To oversee a public construction bid process for MITIGATION PROJECT and provide construction oversight during construction of MITIGATION PROJECT.
6. To create a CALTRANS approved Habitat Mitigation and Monitoring Plan, or similar, to document MITIGATION PROJECT habitat conditions.
7. To submit draft monitoring reports to CALTRANS for five (5) years (with monitoring anticipated to begin in the year 2028 and end five (5) years later, currently anticipated to be year 2033) by December 1st of each year.
8. To address CALTRANS' comments on the draft monitoring report and thereafter submit a final draft monitoring report to CALTRANS by December 31st for five (5) years (with monitoring anticipated to begin in the year 2028 and end five (5) years later, currently anticipated to be year 203) for CALTRANS' review and approval, if appropriate.
9. If at any time during the five (5) year monitoring period (with monitoring anticipated to begin in the year 2028 and end five (5) years later currently anticipated to be year 2033) it is determined by CALTRANS that progress towards the success criteria is not being achieved then SCRPs shall implement any remedial or adaptive management measures necessary to meet the success criteria.
10. To use one hundred percent (100%) of CALTRANS' funds provided pursuant to this Agreement, in order to satisfy SCRPs obligation and responsibilities set forth in this Agreement.
11. To submit an initial invoice in the amount of \$133,000.00 to CALTRANS within thirty (30) calendar days of execution of this Agreement and prior to commencement of any work performed by SCRPs. Said initial billing represents 1 year estimated costs of MITIGATION PROJECT development. An advance payment is required for SCRPs to acquire a consultant and necessary equipment.

Thereafter to prepare and submit to CALTRANS quarterly billing statements for actual cost incurred and paid by SCRCP. CALTRANS' total obligation to SCRCP for MITIGATION PROJECT costs shall not exceed the amount of \$1,238,000.00.

12. Upon completion of MITIGATION PROJECT and all work incidental thereto, to furnish CALTRANS with a detailed statement of MITIGATION PROJECT costs to be borne by CALTRANS. SCRCP thereafter shall refund to CALTRANS, promptly after completion of SCRCP's final accounting of MITIGATION PROJECT costs, any amount of CALTRANS' deposits remaining after actual costs to be borne by CALTRANS have been deducted, or to bill CALTRANS for any additional amount required to complete CALTRANS' financial obligations pursuant to this Agreement.
13. 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, SCRCP 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.
14. To include prevailing wage requirements in its contracts for public work. Work performed by SCRCP's own forces is exempt from the Labor Code's Prevailing Wage requirements.
15. SCRCP shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed falls within Labor Code sections 1720(a)(1) definition of "public works" or maintenance work under Labor Code section 1771. Subcontracts shall include all prevailing wage requirements set forth in SCRCP's contracts.
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 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 SCRCP that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished when requested.

## **SECTION II**

### **CALTRANS AGREES:**

1. To act as National Environmental Protection Act (NEPA) Lead Agency for MITIGATION PROJECT and to fully comply with any terms and conditions thereof.  
  
To obtain any necessary environmental approvals and/or resource agency agreements, permits, and/or approvals required prior to implementation of MITIGATION PROJECT and to fully comply with any terms and conditions thereof.
2. To design MITIGATION PROJECT in coordination with SCRIP to satisfy MITIGATION REQUIREMENTS.
3. To pay SCRIP within forty-five (45) calendar days after receipt of quarterly invoices, the expenses incurred by SCRIP during the billing period and to continue such payments until completion of MITIGATION PROJECT.
4. CALTRANS' total obligation to SCRIP for MITIGATION PROJECT costs shall not exceed the amount of \$1,238,000.00.
5. To review and provide comments to SCRIP by December 15th on the draft monitoring reports prepared by SCRIP, and submitted to CALTRANS for five (5) years (with monitoring anticipated to begin in the year 2028 and end five (5) years later, currently anticipated to be year 2033).
6. Within seven (7) calendar days of receipt, to review and approve, if appropriate, the draft final monitoring report submitted by SCRIP to CALTRANS for five (5) years (with monitoring anticipated to begin in the year 2028 and end five (5) years later, currently anticipated to be year 2033).
7. CALTRANS will obtain written confirmation from REGULATORY AGENCIES that MITIGATION REQUIREMENTS have been met and provide a copy to SCRIP.

## **SECTION III**

### **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).
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. 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.
4. 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.
5. 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.
6. SCRIP is responsible for the management of any HM-2 found within MITIGATION PROJECT limits. SCRIP may use up to 5% of the funds already obligated by CALTRANS under this agreement for the costs associated with HM-2 management activities. However, CALTRANS is not responsible to pay any additional money to SCRIP for these costs.
7. 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.
8. Neither SCRIP 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 SCRIP 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.

9. Neither 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 SCRP, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon SCRP under this agreement. It is understood and agreed that SCRP, to the extent permitted by law will defend, indemnify, and save harmless 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 SCRP, its contractors, sub-contractors, and/or its agents under this agreement.
10. In the event of any breach of this Agreement by either party, the other party 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.
11. A failure by either 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.
12. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not a 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.
13. 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.
14. 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 either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
15. This Agreement shall terminate upon CALTRANS' written acceptance that SCRP has completed MITIGATION PROJECT, however all indemnification, document retention, audit, claims, environmental, legal challenge, hazardous material, operation, maintenance, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

**CONTACTS**

<u>COUNTY</u>	<u>CALTRANS</u>
Minona Heaviland Natural Resources Park Program Supervisor Sonoma County Regional Parks 400 Aviation Blvd, Suite 100 Santa Rosa, CA 95403 minona.heaviland@sonomacounty.gov (707) 291-7669	Daniel Licht Mitigation Specialist Caltrans D4 111 Grand Ave Oakland, CA 94612 daniel.licht@dot.ca.gov (510) 312-7904

PARTIES are empowered by CA Streets and Highways Code Section 126.1 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**

**SCRP**

By: \_\_\_\_\_  
District Director

By: \_\_\_\_\_  
Bert Whitaker  
Director

Approved as to form and procedure:

Approved as to form:

\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
County Counsel

Certified as to budgeting of funds:

\_\_\_\_\_  
District Budget Manager

Certified as to financial terms and  
policies:

\_\_\_\_\_  
Accounting Administrator