

Agreement for Funding of Utility Adjustments for County Pavement Preservation Program

This Agreement ("Agreement") for Funding of Utility Adjustments for County Pavement Preservation Program is by and between **South Park County Sanitation District** ("District") and **County of Sonoma** ("County"). District and County are hereinafter referred to as "Parties" and individually as a "Party."

RECITALS

- A. The Sonoma County Pavement Preservation Program is part of the on-going effort of the County Board of Supervisors to address the road rehabilitation and preservation needs of the County highway system. On May 21, 2019, the County awarded the 2019 Pavement Preservation Program – Full Depth Reclamation and Overlays Project (C19600), to low bidder Ghilotti Construction Company, Inc. The contract includes pavement preservation work on roads within the jurisdiction of the District and will necessitate adjustment of sanitary sewer manholes and related appurtenances owned by District at the locations specified on Exhibit A ("Project").
- B. County has requested \$2,000 from District to fund the construction of the Project as an alternative to District performing the work at its own cost and expense in coordination with County. Estimated Project costs are shown in Exhibit B.
- C. It is in the best interest of both District and County to cooperate in the construction and financing of the Project.
- D. County has performed all appropriate environmental analysis related to the Project under the California Environmental Quality Act (CEQA).
- E. Sonoma County Water Agency operates and manages District under contract with District. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of District.

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

AGREEMENT

The County and District agree as follows:

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: Map of County Projects Requiring District's Utility Cover Adjustments
- b. Exhibit B: Summary of Estimated Project Costs

3. **COORDINATION**

- 3.1. County shall coordinate the work with District's Project Manager. Contact information and mailing addresses:

District	County
Project Manager: Kevin Booker 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-521-1865 Email: Kevin.Booker@scwa.ca.gov	Contact: Anthony Moore, P.E. 2300 County Center Drive, Suite B100 Santa Rosa, CA 95403 Phone: 707-565-2231 Email: Anthony.Moore@sonoma-county.org
Remit invoices to:	Remit payments to:
Accounts Payable Same address as above or Email: ap_agreements@scwa.ca.gov	Attn: Accounts Receivable Same address as above

4. **COUNTY'S RESPONSIBILITIES**

County shall complete the following at its cost and expense, except to the extent of District funding provided for in Articles 5 and 6 below.

- 4.1. General: County agrees to perform all Project-related work in accordance with the requirements of applicable federal, state, and local laws.
- 4.2. Environmental Documentation: County shall be the Lead Agency for the Project under the requirements of the CEQA and shall perform all appropriate environmental analysis.
- 4.3. Permits: County shall obtain any permits that may be necessary from utilities or regulatory agencies for construction of the Project.
- 4.4. Design and Surveying: County shall design the Project including all design surveying and construction staking.
- 4.5. Final Plans and Specifications: County shall prepare a complete set of Project construction documents and provide District with those construction documents that describe or show District facilities or property. Such documents shall be prepared by and signed and stamped by, or under the responsible charge of, appropriately registered professionals.
- 4.6. Construction: County shall construct the Project in accordance with the Final Plans and Specifications.

- 4.7. Contract Administration: County shall administer the contract for construction of the Project.
- 4.8. Prevailing Wages: County understands that use of District funds for any “public work,” as defined by Labor Code sections 1720 *et seq.*, triggers prevailing wage compliance obligations under the California Labor Code, and that the Project contemplated hereunder qualifies as a “public work” for this purpose. County agrees to comply with all obligations of an “awarding body” as defined by Labor Code section 1722 with respect to any public works contract it may enter into pursuant to this Agreement. Without limiting the generality of the foregoing, County agrees to (1) confirm that all contractors and subcontractors engaged to work on the Project are registered and qualified pursuant to Labor Code section 1725.5; (2) require all such contractors and subcontractors to pay prevailing wages to all workers on the Project in accordance with the California Labor Code and applicable DIR regulations; (3) require all such contractors and subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly pursuant to Labor Code section 1771.4(a)(3); and (4) provide all notices required pursuant to 1771.1, 1771.4 and 1771.3.
- 4.9. Inspection: County shall inspect the Project.
- 4.10. Notice of Completion and Record Drawings: County shall file the Notice of Completion for construction and provide a copy to District within 30 calendar days of its filing. County shall prepare record drawings showing any changes, deletions, or additions to the Project and provide reproducible set to District within 45 calendar days of filing the Notice of Completion.
- 4.11. Records: County shall maintain complete and accurate records of all transactions related to the Project 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 District at all reasonable times for inspection and analysis.
- 4.12. Statement of Costs: Within 60 days of filing a Notice of Completion, County shall submit to District a statement of complete accounting of County’s Project costs for the following categories:
- a. Construction costs
 - b. Change orders
- 4.13. Invoices: County shall bill District for costs authorized under this Agreement, with an invoice that is clearly marked with “County of Sonoma, Funding of Utility Adjustments for Pavement Preservation Program, Project-Activity Code S0003C019.”

5. **DISTRICT'S RESPONSIBILITIES**

- 5.1. **Total Amount to be Funded:** The total amount payable by District under this Agreement shall not exceed \$2,000.
- 5.2. **Payment:** Upon execution of this Agreement and receipt of an invoice thereof, District shall deposit with County the invoiced amount, which is to finance 100 percent of County's share of Project's costs.
- 5.3. **Title:** Title to all Project facilities constructed pursuant to this Agreement shall vest with District.
- 5.4. **Operation and Maintenance:** District shall accept ownership and shall operate and maintain Project facilities in perpetuity.

6. **ADDITIONAL REQUIREMENTS**

- 6.1. **Term of Agreement:** This Agreement shall expire on June 30, 2020.
- 6.2. **Excess Costs:** If the Project costs exceed the total amount authorized under this Agreement, County shall request additional funding from District. In such event, County shall submit a revised Project cost estimate to Sonoma County Water Agency's General Manager with a written request, including reasons for cost overruns. District shall have the option in its sole discretion to either (1) amend this Agreement to fund the additional amounts; or (2) elect to have work not-yet-performed deleted from the project.
- 6.3. **Authority to Amend Agreement:** 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 County Water Agency's General Manager and County's Department Head in a form approved by County Counsel.
- 6.4. **Authority to Terminate:** Should County or District fail to perform any of their respective obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, District or County, as the case may be, may immediately terminate this Agreement by giving the other party written notice of such termination, stating the reason for termination. In the event of such termination, District will pay County for services satisfactorily rendered to the date of termination. However, District will deduct from such amount the amount of damage, if any, sustained by District by virtue of the breach of the Agreement by County. District's right to terminate may be exercised by Sonoma County Water Agency's General Manager and the Director of Transportation and Public Works.
- 6.5. **Refund of Remaining Funds:** If the Project cost accounting statement submitted under Paragraph 4.12 of this Agreement demonstrates that Project costs are less

than the amounts paid to County, County shall refund difference to District within 30 calendar days of submitting said statement to District.

- 6.6. No Waiver of Breach: The waiver by District 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.
- 6.7. 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.
- County and District 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. County and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 6.8. No Third-Party Beneficiaries: Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 6.9. Applicable Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
- 6.10. 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.
- 6.11. 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.
- 6.12. 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.

6.13. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

7. **MUTUAL INDEMNIFICATION**

7.1. 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.

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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:

TW 18/19-093

By: _____
Sonoma County Water Agency
Division Manager - Administrative
Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

South Park County Sanitation District

County of Sonoma

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
November 5, 2019

By: _____
Johannes Hoevertsz, Director
Transportation and Public Works
Authorized per County of Sonoma's Board
of Supervisors Action on **November 5,**
2019

Date: _____

Date: _____

Exhibit A

Map of County Projects Requiring District's Utility Cover Adjustments

****UPDATED MAP PENDING 9/27/19****

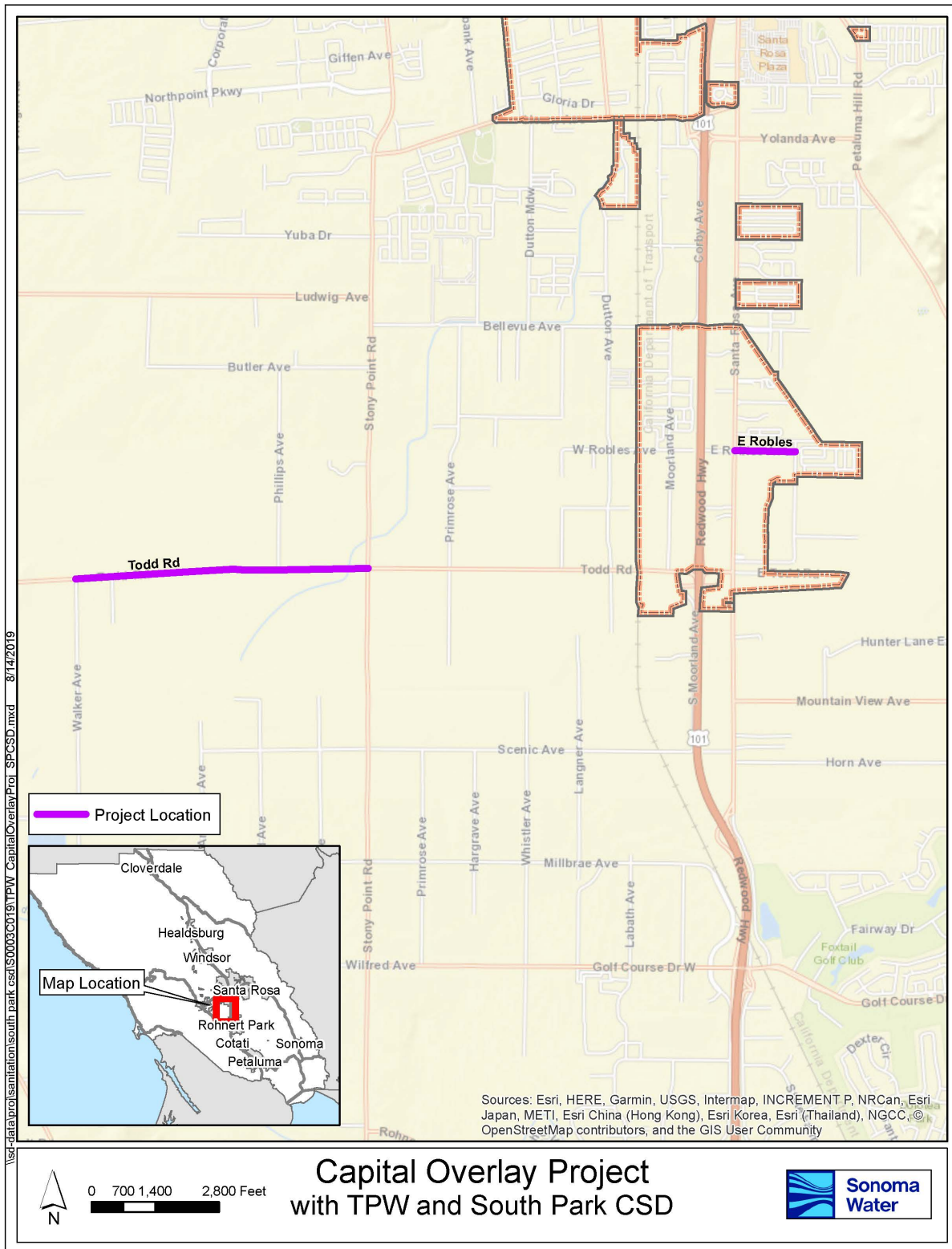


Exhibit B

Summary of Estimated Project Costs

SONOMA COUNTY 2019 PAVEMENT PRESERVATION PROGRAM							
SONOMA COUNTY 2019 PPP-SPCSD FACILITY ADJUSTMENT COST ESTIMATE							
Road	Treatment	Item	Count	Estimated Unit Cost	Item Total	Admin/Contingency @ 20%	Subtotal
		Adjust Sanitary Sewer Manhole	1	\$1,000	\$1,000	\$200	\$1,200
Total Construction Cost Estimate							\$1,200