

Restoration Services in Support of Sonoma Aqueduct Creek Crossing Vegetation Management Project Mitigation

This agreement ("Agreement") is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California ("Sonoma Water") and **Sonoma Ecology Center**, a California non-profit corporation ("SEC"). 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 6.1.

RECITALS

- A. SEC represents that it is a duly qualified conservation science organization, experienced in watershed monitoring, native plant design and installation, maintenance, and related services.
- B. Sonoma Water is undertaking the Sonoma Aqueduct Creek Crossings Vegetation Management Project (Project) to reduce potential pipe failure resulting from damage caused by adjacent trees. The Project will prune, remove, and manage vegetation within the Sonoma Aqueduct easement at three creek crossing sites where sections of the pipe are exposed.
- C. The California Department of Fish and Wildlife requires tree planting as mitigation for this work. There are no areas on the sites suitable or large enough for the number of trees required to be planted. Therefore, mitigation planting will be conducted along Sonoma Creek within the campus of the now closed Sonoma Development Center.
- D. Under this Agreement, SEC will design a native tree planting plan, install 100 trees with irrigation and plant protection, maintain planted areas, and monitor and report annually on status of restoration effort.

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

- a. Exhibit A: Scope of Work
- b. Exhibit B: Schedule of Costs
- c. Exhibit C: Estimated Budget for Scope of Work
- d. Exhibit D: Insurance Requirements
- e. Exhibit E: Map

3. **SCOPE OF SERVICES**

- 3.1. *SEC's Specified Services:* SEC shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 11 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.
- 3.2. *Cooperation with Sonoma Water:* SEC shall cooperate with Sonoma Water in the performance of all work hereunder. SEC shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

Sonoma Water	SEC
Project Manager: Candace Messner 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-524-6424 Email: Candace.Messner@scwa.ca.gov	Contact: Jason Mills PO Box 1486 Eldridge, CA 95431 Phone: 707-996-0712, ext. 103 Email: Jason@sonomaecologycenter.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

- 3.3. *Performance Standard and Standard of Care:* SEC hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, it being understood that acceptance of SEC's work by Sonoma Water shall not operate as a waiver or release. Sonoma Water has relied upon the professional ability and training of SEC as a material inducement to enter into this Agreement. If Sonoma Water determines that any of SEC's work is not in accordance with such level of competency and standard of care, Sonoma Water, in its sole discretion, shall have the right to do any or all of the following: (a) require SEC to meet with Sonoma Water to review the quality of the work and resolve matters of concern; (b) require SEC to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7 (Termination); or (d) pursue any and all other remedies at law or in equity.
- 3.4. *Assigned Personnel:*
- a. SEC shall assign only competent personnel to perform work hereunder. In the event that at any time Sonoma Water, in its sole discretion, desires the removal of any person or persons assigned by SEC to perform work hereunder, SEC shall remove such person or persons immediately upon receiving written notice from Sonoma Water.

- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Sonoma Water to be key personnel whose services were a material inducement to Sonoma Water to enter into this Agreement, and without whose services Sonoma Water would not have entered into this Agreement. SEC shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Sonoma Water.
- c. In the event that any of SEC's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of SEC's control, SEC shall be responsible for timely provision of adequately qualified replacements.

4. PAYMENT

4.1. *Total Costs:*

- a. Total costs under this Agreement shall not exceed \$123,048.
- b. No more than \$121,000 will be paid until the Draft Year 5 Monitoring Report is submitted.

4.2. *Method of Payment:* SEC shall be paid in accordance with Exhibit B (Schedule of Costs). Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified in Exhibit B. Expenses not expressly authorized by the Agreement shall not be reimbursed.

4.3. *Invoices:* SEC shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by Sonoma Water. The bills shall show or include:

- a. SEC name
- b. Name of Agreement
- c. Sonoma Water's Project-Activity Code T0048M004
- d. Task performed with an itemized description of services rendered by date
- e. Summary of work performed by subconsultants, as described in Paragraph 19.4
- f. Time in quarter hours devoted to the task
- g. Hourly rate or rates of the persons performing the task
- h. List of reimbursable materials and expenses
- i. Copies of receipts for reimbursable materials and expenses

4.4. *Cost Tracking:* SEC has provided an estimated breakdown of costs, included in Exhibit C (Estimated Budget for Scope of Work). Exhibit C will only be used as a tool to monitor progress of work and budget. Actual payment will be made as specified in Paragraph 4.2 above.

- 4.5. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of Sonoma Water business after presentation of an invoice in a form approved by Sonoma Water for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by Sonoma Water.
- 4.6. *Taxes Withheld by Sonoma Water:*
- a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, Sonoma Water shall withhold seven percent of the income paid to SEC for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if SEC does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
 - b. If SEC does not qualify, as described in Paragraph 5.11.a, Sonoma Water requires that a completed and signed Form 587 be provided by SEC in order for payments to be made. If SEC is qualified, as described in Paragraph 5.11.a, then Sonoma Water requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, SEC agrees to promptly notify Sonoma Water of any changes in the facts. Forms should be sent to Sonoma Water pursuant to Article 21 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the amount withheld, SEC has the option to provide Sonoma Water with either a full or partial waiver from the State of California.

5. TERM OF AGREEMENT AND COMMENCEMENT OF WORK

- 5.1. *Term of Agreement:*
- a. This Agreement shall expire on December 31, 2025, unless terminated earlier in accordance with the provisions of Article 7 (Termination).
 - b. Sonoma Water shall have two options to extend this Agreement for a period of one year each by providing written notice to SEC thirty days in advance of the expiration date noted in this Article and of the first extension option.
- 5.2. *Commencement of Work:* SEC is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

6. TERMINATION

- 6.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.

- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Sonoma Water shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to SEC.
- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should SEC fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Sonoma Water may immediately terminate this Agreement by giving SEC written notice of such termination, stating the reason for termination.
- 6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, SEC, within 14 days following the date of termination, shall deliver to Sonoma Water all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by SEC or SEC's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 16.13 and shall submit to Sonoma Water an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by Sonoma Water, SEC shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by SEC bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then SEC shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if Sonoma Water terminates the Agreement for cause pursuant to Paragraph 7.3, Sonoma Water shall deduct from such amounts the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by SEC.

7. INDEMNIFICATION

- 7.1. SEC agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, and to indemnify, hold harmless, and release Sonoma County Water Agency, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including SEC, that arise out of, pertain to, or relate to SEC's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. SEC agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency based upon a claim relating to SEC's or its agents', employees', contractors', subcontractors', or invitees' performance or

obligations under this Agreement. SEC's obligations under this Article 8 apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency. Sonoma County Water Agency shall have the right to select its legal counsel at SEC's expense, subject to SEC'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 SEC or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. INSURANCE

- 8.1. With respect to performance of work under this Agreement, SEC shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit D (Insurance Requirements).

9. PROSECUTION OF WORK

- 9.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for SEC's performance of this Agreement shall be extended by a number of days equal to the number of days SEC has been delayed.

10. EXTRA OR CHANGED WORK

- 10.1. 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 County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that Sonoma Water personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of SEC to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter SEC shall be entitled to no compensation whatsoever for the performance of such work. SEC further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Sonoma Water.

11. **CONTENT ONLINE ACCESSIBILITY**

- 11.1. *Accessibility:* Sonoma Water policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Sonoma Water managed or Sonoma Water funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and Sonoma Water's Web Site Accessibility Policy located at <http://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- 11.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the internet, public outreach materials), SEC shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g., Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 11.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, SEC shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. SEC agrees to cooperate with Sonoma Water staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 11.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Sonoma Water's Web Site Accessibility Policy shall be the responsibility of SEC. If Sonoma Water, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Sonoma Water managed or Sonoma Water funded Web site does not comply with Sonoma Water Accessibility Standards, Sonoma Water will promptly inform SEC in writing. Upon such notice, SEC shall, without charge to Sonoma Water, repair or replace the non-compliant materials within such period of time as specified by Sonoma Water in writing. If the required repair or replacement is not completed within the time specified, Sonoma Water shall have the right to do any or all of the following, without prejudice to Sonoma Water's right to pursue any and all other remedies at law or in equity:
 - a. Cancel any delivery or task order
 - b. Terminate this Agreement pursuant to the provisions of Article 7 (Termination); and/or
 - c. In the case of custom Electronic and Information Technology (EIT) developed by SEC for Sonoma Water, Sonoma Water may have any necessary changes or repairs performed by itself or by another contractor. In such event, SEC

shall be liable for all expenses incurred by Sonoma Water in connection with such changes or repairs.

- 11.6. *Sonoma Water's Rights Reserved:* Notwithstanding the foregoing, Sonoma Water may accept deliverables that are not strictly compliant with Sonoma Water Accessibility Standards if Sonoma Water, in its sole and absolute discretion, determines that acceptance of such products or services is in Sonoma Water's best interest.

12. REPRESENTATIONS OF SEC

- 12.1. *Status of SEC:* The parties intend that SEC, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. SEC is not to be considered an agent or employee of Sonoma Water and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Sonoma Water provides its employees. In the event Sonoma Water exercises its right to terminate this Agreement pursuant to Article 7 (Termination), SEC expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *No Suspension or Debarment:* SEC warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. SEC also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 12.3. *Taxes:* SEC agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. SEC agrees to indemnify and hold Sonoma Water harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of SEC's failure to pay, when due, all such taxes and obligations. In case Sonoma Water is audited for compliance regarding any withholding or other applicable taxes, SEC agrees to furnish Sonoma Water with proof of payment of taxes on these earnings.
- 12.4. *Records Maintenance:* SEC shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Sonoma Water for inspection at any reasonable time. SEC shall maintain such records for a period of four (4) years following completion of work hereunder.

- 12.5. *Conflict of Interest:* SEC covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. SEC further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by Sonoma Water, SEC shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Sonoma Water within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.6. *Statutory Compliance/Living Wage Ordinance:* SEC agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, SEC expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 12.7. *Nondiscrimination:* SEC shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.8. *Assignment of Rights:* SEC assigns to Sonoma Water all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by SEC in connection with this Agreement. SEC agrees to take such actions as are necessary to protect the rights assigned to Sonoma Water in this Agreement, and to refrain from taking any action which would impair those rights. SEC's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Sonoma Water may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Sonoma Water. SEC shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Sonoma Water.

- 12.9. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by SEC or SEC’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Sonoma Water. Sonoma Water shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, SEC shall promptly deliver to Sonoma Water all such documents, which have not already been provided to Sonoma Water in such form or format as Sonoma Water deems appropriate. Such documents shall be and will remain the property of Sonoma Water without restriction or limitation. SEC may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Sonoma Water.

13. PREVAILING WAGES

- 13.1. *General:* SEC shall pay to any worker on the job for whom prevailing wages have been established an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Sonoma Water to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. SEC shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed, in addition to all other job site notices prescribed by regulation. Copies of the prevailing wage rate of per diem wages are on file at Sonoma Water and will be made available to any person upon request.
- 13.2. *Subcontracts:* SEC shall insert in every subcontract or other arrangement which SEC may make for performance of such work or labor on work provided for in the Agreement, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code section 1775(b)(1), SEC shall provide to each Subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
- 13.3. *Compliance Monitoring and Registration:* This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. SEC shall furnish and shall require all 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 (Labor Code 1771.4 (a)(3)). SEC and all subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Agreement.

- 13.4. *Compliance with Law:* In addition to the above, SEC stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1725.5, 1775, 1776, 1777.5, 1813, and 1815 and California Code of Regulations, Title 8, section 16000, et seq.

14. DEMAND FOR ASSURANCE

- 14.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 18 limits Sonoma Water's right to terminate this Agreement pursuant to Article 7 (Termination).

15. ASSIGNMENT AND DELEGATION

- 15.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 15.2. *Subcontracts:* Notwithstanding the foregoing, SEC may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 15.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 19.2 will be utilized, SEC may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 19.3. The following

provisions apply to any subcontract entered into by SEC other than those listed in Paragraph 19.2:

- a. Prior to entering into any contract with subconsultant, SEC shall obtain Sonoma Water approval of subconsultant.
- b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Sonoma Water in substantially the same form as that contained in Article 8 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.

15.4. *Summary of Subconsultants' Work:* SEC shall provide Sonoma Water with a summary of work performed by subconsultants with each invoice submitted under Paragraph 5.6. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

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

- 16.1. *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 3.2.
- 16.2. *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 21.

17. MISCELLANEOUS PROVISIONS

- 17.1. *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.

- 17.2. *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.
- 17.3. *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. SEC 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. SEC and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 17.4. *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.
- 17.5. *No Third-Party Beneficiaries:* Except as provided in Article 8 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 17.6. *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.
- 17.7. *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.
- 17.8. *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.

17.9. *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.

17.10. *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:

TW 20/21-008

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

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
Sonoma Water

Date/TW Initials: 8/28/2020 rv

Sonoma County Water Agency

Sonoma Ecology Center, a California non-profit corporation

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
October 20, 2020

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____

DIR Registration #: _____

Exhibit A

Scope of Work

1. **GENERAL**

- 1.1. Install, maintain and monitor 100 native trees along Sonoma Creek within the campus of the Development Center campus in Eldridge, California (Restoration Project). Planting areas are indicated in Exhibit E (Map). Restoration Project shall achieve a minimum survival of 73 trees for 5 consecutive years.

2. **TASKS**

- 2.1. Task 1: Layout and Planting Design
- a. Design a native tree-planting plan (Planting Design) that includes approximately 60 oaks and 40 mixed riparian species.
 - b. Select suitable planting locations, spacing and species based on SEC evaluation of site conditions. Spacing shall account for mature tree size and range from approximately 20-50 feet. Species shall be locally sourced native trees, in stock at SEC's in-house nursery and at minimum in pot sizes ranging from D40 to tree pots.
 - c. Submit Planting Design for review and approval in accordance with the following:
 - i. Draft: Prepare Draft Planting Design and submit to Sonoma Water for review and approval in accordance with the dates listed for this task. Include the tree species, quantities, locations and spacing, and the anticipated planting date(s).
 - ii. Subsequent Draft(s): If Sonoma Water requests revisions, revise the Draft Planting Design and resubmit 1 electronic copy of the design for Sonoma Water approval.
 - iii. Final: Following Sonoma Water approval and prior to Sonoma Water's acceptance of work under this Agreement, submit the final approved Planting Design to Sonoma Water.

Deliverable	Due Date
Draft Planting Design	December 1, 2020
Final Planting Design	December 15, 2020

- 2.2. Task 2: Native Tree Installation, Irrigation, and Plant Protection Installation
- a. Implement the Final Planting Design approved by Sonoma Water.
 - b. Prepare the Restoration Project site for planting including on-site layout and pin-flagging planting locations and species.
 - c. Install trees and complete installation in the rainy season (November 2020 to March 2021).
 - d. Install an individual 5-gallon water box for each planted trees.

- e. Install herbivory protection for each planted tree including 5-gallon gopher cages and 4-feet high Vaca cages stabilized with rebar. Drape Vaca cages with jute netting to provide sun protection.

2.3. Task 3: Tree Maintenance

- a. Maintain Restoration Project to achieve a minimum survival of 73 trees for 5 consecutive years.
- b. Inspect the Restoration Project site at minimum three times annually during the dry season (April-September) to mow surrounding vegetation back from planted trees and refill water boxes, for five years following planting.
- c. Remove installed aboveground herbivory cages, jute netting and water boxes by the end of the Agreement term.

2.4. Task 4: Annual Monitoring and Reporting

- a. Monitoring:
 - i. Perform monitoring annually each fall (September- November) for a total of 5 years after planting.
 - ii. Obtain Restoration Project photos from a minimum of three specific vantage points for each annual report that show the status of the restoration effort.
 - iii. Conduct survival counts of installed trees; note any natural recruitment of native tree or plant species.
- b. Monitoring Report:
 - i. Contents. Prepare a Monitoring Report that includes, but is not limited to, the items below:
 - a) Project location and background summary
 - b) Summary of maintenance performed during reporting period
 - c) Description of the current survival rate and trends
 - d) Description of the current site conditions; include factors contributing to Restoration Project success or failure
 - e) Describe and quantify any natural recruitment of native species
 - f) Plant survival table: List the planted tree species (scientific and common names), quantities installed, and survival count. Include the survival count for the current monitoring year as well as previous monitoring years in separate columns.
 - g) Annual photo monitoring: Take monitoring photos that show the site representatively from the same points each year to track development. Include photos for the current monitoring year as well as previous monitoring years, in chronological order. For example, if the report covers year 3 of monitoring, photos from year 1, year 2, and year 3 must be included. Provide a caption describing the location and viewpoint of each photo point, and list the monitoring year next to each related photo.

- ii. Review. Submit to Sonoma Water for review:
 - a) First Draft: Prepare the annual Monitoring Report in draft form and submit to Sonoma Water for review and approval in accordance with the dates listed below for this deliverable.
 - b) Subsequent Draft(s): If Sonoma Water requests revisions, revise the draft Monitoring Report and resubmit the report for Sonoma Water approval.
 - c) Final: Following Sonoma Water approval and prior to Sonoma Water's acceptance of work under this Agreement, submit the final approved Monitoring Report to Sonoma Water in accordance with the dates listed below for this deliverable:

Deliverable	Due Date
Draft Year 1 Monitoring Report	November 1, 2021
Final Year 1 Monitoring Report	December 1, 2021
Draft Year 2 Monitoring Report	November 1, 2022
Final Year 2 Monitoring Report	December 1, 2022
Draft Year 3 Monitoring Report	November 1, 2023
Final Year 3 Monitoring Report	December 1, 2023
Draft Year 4 Monitoring Report	November 1, 2024
Final Year 4 Monitoring Report	December 1, 2024
Draft Year 5 Monitoring Report	November 1, 2025
Final Year 5 Monitoring Report	December 1, 2025

3. DELIVERABLES

- 3.1. Submit one electronic copy in PDF format (emailed, on USB flash drive, or via internet) of each final deliverable to Sonoma Water.
- 3.2. Comply with requirements of Article 11 (Content Online Accessibility).

Exhibit B

Schedule of Costs

PERSONNEL	
Title	Rates <u>not</u> Subject to Prevailing Wage
Program Manager	\$110.00
Sr. Project Manager	\$107.00
Restoration Specialist	\$65.00
Restoration Technician	\$57.00
Biologist	\$107.00
GIS Manager	\$107.00
PREVAILING WAGES	
For work subject to prevailing wage rates, the hourly rate charged will be equivalent to the prevailing wage rate applicable to the work performed by each laborer.	
EXPENSES	
Item	Cost
Weed mats	at cost not to exceed \$542
Irrigation water boxes	at cost not to exceed \$542
Plant protection: herbivory cages and jute netting	at cost not to exceed \$1,884
Copies	\$0.10 per page
Postage	at cost
Overnight mail	at cost
Supplies and materials	cost plus 10%
Mileage for personal car	current IRS rate

Exhibit C

Estimated Budget for Scope of Work

Restoration Activity	Cost Estimate
Layout and design	\$1,400
Tree planting	\$22,800
Irrigation installation	\$3,480
Plant protection installation	\$22,800
Maintenance	\$52,200
Monitoring	\$17,400
Materials	
Weed mats	\$542
Irrigation (water boxes)	\$542
Protection (herbivory cages and jute netting)	\$1,884
TOTAL	\$123,048

Exhibit D

Insurance Requirements

With respect to performance of work under this Agreement, SEC shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Sonoma Water reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve SEC from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. INSURANCE

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if SEC has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.
- e. If SEC currently has no employees as defined by the Labor Code of the State of California, SEC agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

1.2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If SEC maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by SEC.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Sonoma Water. SEC is responsible for any

deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether SEC has a claim against the insurance or is named as a party in any action involving Sonoma Water.

- d. Sonoma County Water Agency, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of SEC in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and SEC and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If SEC currently owns no autos, SEC agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.5. Documentation

- a. The Certificate of Insurance must include the following reference:
TW 20/21-008.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. SEC agrees to maintain current Evidence of Insurance on file with Sonoma Water for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, or 1.3 above.

- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. SEC shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.6. Policy Obligations

- a. SEC's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.7. Material Breach

- a. If SEC fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Sonoma Water, at its sole option, may terminate this Agreement and obtain damages from SEC resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to SEC, Sonoma Water may deduct from sums due to SEC any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.

Exhibit E

Map

