

Agreement for Funding of Utility Adjustments for Pavement Preservation Program

This agreement ("Agreement") is by and between **South Park County Sanitation District** ("District") and **County of Sonoma** through its Department of Transportation and Public Works ("County").

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.
- B. County has a current project (Project) that 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 ("Map").
- C. 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.
- D. District and County do mutually desire to cooperate in the construction and financing of said Project.
- E. County has requested \$60,000 from District to relocate District facilities as part of County's Project as an alternative to District performing the work as a separate project. Estimated District facility relocation costs are shown on Exhibit B.
- F. County shall perform appropriate environmental analysis related to the Project under the California Environmental Quality Act (CEQA).

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

- b. Exhibit B: Estimated District Facility Relocation Costs
- c. Exhibit C: Insurance

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 work in accordance with the requirements of applicable federal, state, and local laws, including all state and local orders and guidance related to COVID-19 as may be amended from time to time.
- 4.2. Environmental Documentation: County shall be the Lead Agency for the Project under the requirements of the California Environmental Quality Act (CEQA) and shall prepare all appropriate environmental documents.
- 4.3. Permits: County shall obtain any permits that may be necessary from utilities or regulatory agencies for construction of the Project.
- 4.4. Rights-of-Way: County shall act as District's agent for acquiring any and all property rights as necessary for construction of the Project.
- 4.5. Design and Surveying: County shall design the Project including all design surveying and construction staking.
- 4.6. Draft Plans and Specifications: County shall prepare a draft of the Project plans and specifications and shall submit one set, along with hydrology and hydraulic calculations, to District for review and comment. The 10-year hydraulic grade line shall be drawn on the draft Project profile drawing.

- 4.7. Final Plans and Specifications: County shall prepare and provide District with a final complete set of all Project construction documents. Such documents shall be prepared by and signed and stamped by, or under the responsible charge of, appropriately registered professionals.
- 4.8. Insurance Requirements and Indemnification Obligations:
- a. Insurance Requirements: County shall require all of its contractors, consultants, and other agents to maintain insurance as described in Exhibit C. Evidence of insurance shall be submitted as specified in Exhibit C.
 - b. Indemnification Obligation of County's Consultants and Contractors:
 - i. County shall include the following language in its Consultant and Contractor agreements:
 - a) Consultant/Contractor agrees to accept all responsibility for loss or damage to any person or entity, including District and Sonoma County Water Agency, and to indemnify, hold harmless, and release District and Sonoma County Water Agency, their 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 Consultant/Contractor, that arise out of, pertain to, or relate to Consultant's/Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant/Contractor agrees to provide a complete defense for any claim or action brought against District or Sonoma County Water Agency based upon a claim relating to Consultant's/Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's/Contractor's obligations under this Paragraph apply whether or not there is concurrent or contributory negligence on the part of District or Sonoma County Water Agency, but, to the extent required by law, excluding liability due to conduct of District or Sonoma County Water Agency. District and Sonoma County Water Agency shall have the right to select their legal counsel at Consultant's/Contractor's expense, subject to Consultant's/Contractor'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 Consultant/Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. This indemnity provision survives the Agreement.
 - c. Documentation: County shall provide evidence of such insurance and indemnification to District in a form satisfactory to District.
- 4.9. Bidding: County shall let Project to bid.

- 4.10. Award: County shall award construction contract to the lowest responsive and responsible bidder unless circumstances exist that would prevent such award.
- 4.11. Construction: County shall construct the Project in accordance with the Final Plans and Specifications.
- 4.12. Contract Administration: County shall administer the contract for construction of the Project.
- 4.13. 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.
- 4.14. Inspection: County shall inspect the Project.
- 4.15. 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.
- 4.16. Records: County 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 District at all reasonable times for inspection and analysis.
- 4.17. Statement of Costs: Within 60 days of filing Notice of Completion, or within 60 days of decision to not award the contract, 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
- 4.18. 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 \$60,000.
- 5.2. Payment: Upon execution of this Agreement and receipt of an invoice thereof, District shall deposit with County \$60,000, which is to finance 100 percent of District’s share of Project’s costs.
- 5.3. Title: Title to District facilities relocated as part of the Project shall vest with District.
- 5.4. Operation and Maintenance: District shall accept ownership and shall operate and maintain in perpetuity District’s facilities relocated as part of the Project.

6. **ADDITIONAL REQUIREMENTS**

- 6.1. Term of Agreement:
 - a. This Agreement shall expire on June 1, 2022.
 - b. District and County shall have two options to extend this Agreement for a period of one year each by providing written notice to the other party thirty days in advance of the expiration date noted in this Article and of the first extension option.
- 6.2. Excess Costs: If costs for relocating District’s facilities exceed the total amount authorized under this Agreement, County shall request additional funding from District. In such event, County shall submit a revised 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 of Sonoma Transportation and Public Works Department Head in a form approved by County Counsel.

- 6.4. Contract not Awarded: If contract is not awarded, Paragraphs 4.10 through 4.15 shall not apply.
- 6.5. 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.
- 6.6. Refund of Remaining Funds: If the Project cost accounting statement submitted under Paragraph 4.17 of this Agreement demonstrates that costs for relocation of District's facilities are less than the amounts paid to County, County shall refund difference to District within 30 calendar days of submitting said statement to District.
- 6.7. 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.
- 6.8. 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.
- 6.9. 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.
- 6.10. 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.

- 6.11. 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.
- 6.12. 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.
- 6.13. 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.
- 6.14. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.
- 6.15. Digital Signature(s): If County uses digital signature(s) to execute this Agreement, or to execute documents required to be executed by this Agreement, the digital signature(s) shall comply with Government Code section 16.5. By using digital signature(s), County warrants and represents that it intends the digital signature to have the same force and effect as the use of a manual signature.

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 20/21-009

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
District

Date/TW Initials: _____

South Park County Sanitation District

**County of Sonoma Transportation and Public
Works Department Head**

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
April 20, 2021

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____

Exhibit A

Map of County Project Requiring District's Utility Cover Adjustments

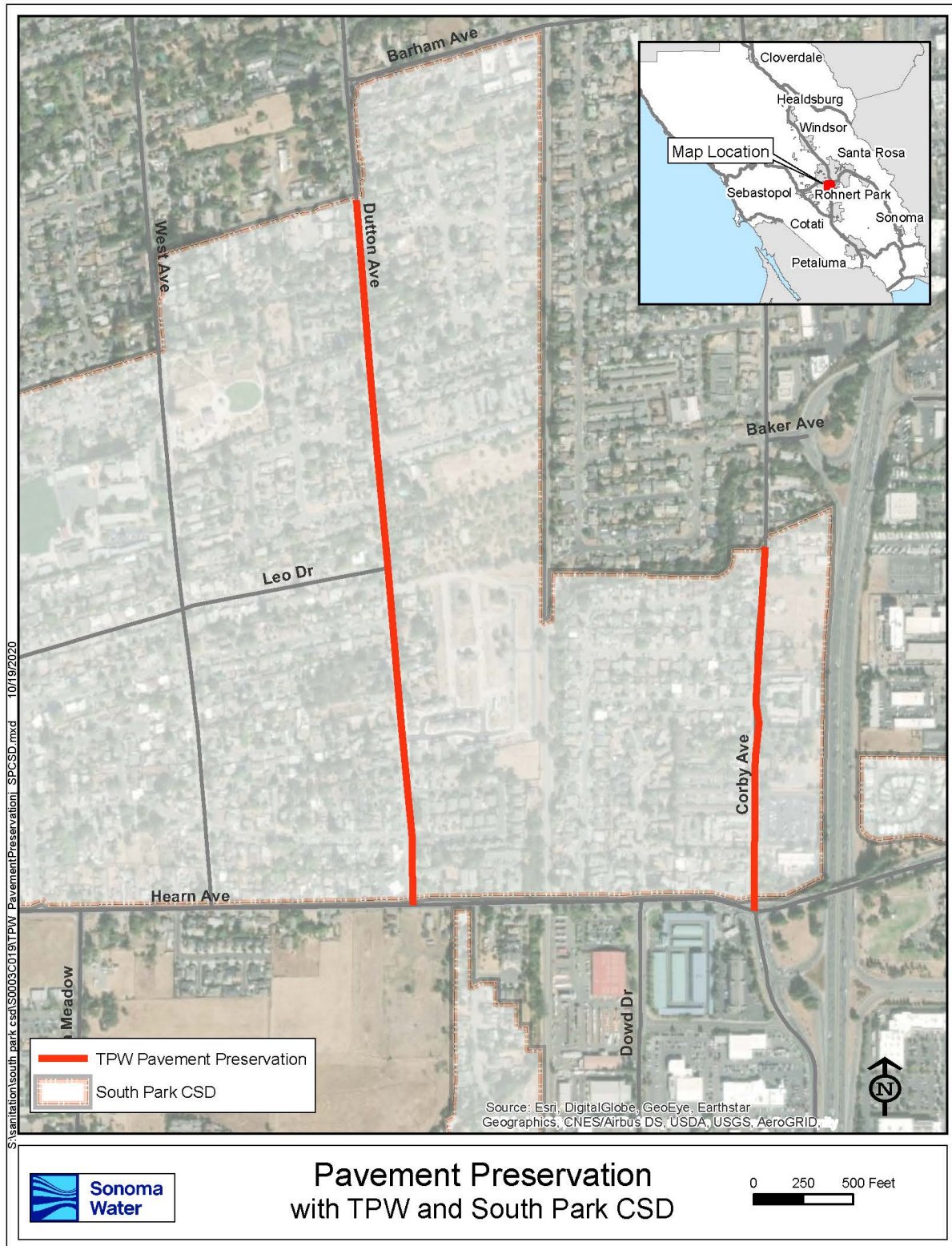


Exhibit B

Estimated District Facility Relocation Costs

SONOMA COUNTY 2020 PAVEMENT PRESERVATION PROGRAM							
SONOMA COUNTY 2020 PPP-SCWA FACILITY ADJUSTMENT COST ESTIMATE							
Road	Treatment	Item	Count	Estimated Unit Cost	Item Total	Markup	Subtotal
Various	Full-Depth Reclamation	Adjust Sanitary Sewer Manhole	33	\$1,500	\$49,500	\$9,900	\$59,400
Total Construction Cost Estimate							\$59,400

Exhibit C

Insurance Requirements

1. **SECTION I – INSURANCE TO BE MAINTAINED BY COUNTY OF SONOMA’S CONTRACTORS AND/OR CONSULTANTS (CONTRACTORS)**

Contractors shall maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. The insurance shall be maintained for the entire term of the Agreement.

District reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. District’s failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or District’s failure to identify any insurance deficiency shall not relieve County of Sonoma 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.

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if Contractors 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 Contractors currently has no employees as defined by the Labor Code of the State of California, Contractors 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 either Commercial Excess or Commercial Umbrella Liability Insurance. If Contractors maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Contractors.
- 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 District. Contractors is responsible for any

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

- d. Sonoma County Water Agency, District their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of Contractors' ongoing operations. (ISO endorsement CG 20 26 or equivalent).
- 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 ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between District and Contractors 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 satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned vehicles if Contractors owns vehicles.
- c. Insurance shall cover hired and non-owned vehicles.

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 20/21-009.
- b. Contractors shall submit required Evidence of Insurance prior to the execution of this Agreement. Contractors agrees to maintain current Evidence of Insurance on file with District for the required period of insurance.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: South Park County Sanitation District, c/o 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. Contractors shall provide immediate written notice if: (1) any of the required insurance policies are 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. Contractors' indemnity and other obligations shall not be limited by the foregoing insurance requirements.