First Amended Agreement for Funding of State Route 12 Corridor Improvement Project

This first amended agreement (“First Amended Agreement” or “Agreement”) is by and between the Sonoma Valley County Sanitation District (hereinafter “District”), a body corporate and politic of the State of California, and County of Sonoma, through its Department of Transportation and Public Works (hereinafter “County”).

RECITALS

A. The State Route 12 Corridor Improvement Project (Project) is located along State Route 12 from Agua Caliente Road to Boyes Boulevard in the unincorporated area of Sonoma Valley and consists of roadway and sidewalk improvements. Attachment B provides location maps of the Project.

B. The Project includes adjustment of existing sewer manholes (14 manholes) and cleanouts (46 cleanouts) to grade; sewer lateral potholing; and the construction of a sewer crossing at Fetters Creek owned by the District (Sanitation Improvements). The County has agreed to include Sanitation Improvements in its Project.

C. Sonoma County Water Agency operates the District. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of the District.

D. Concurrent Resolution No. 02-0234 authorizes Sonoma County Water Agency’s General Manager to enter into certain agreements for District.

E. Estimated Sanitation Improvements cost is shown in Attachment A. Attachment A is an integral part of this Agreement. County is requesting $105,105 from the District’s Sonoma Valley County Sanitation fund for the construction of the Sanitation Improvements during the 2014-2015 construction season. Funding for sewer manholes, cleanouts and sewer laterals, and appurtenances owned by the District is available from the District's fund of the 2014/15 budget.

F. District and County mutually desire to cooperate in the construction and financing of said Project.

G. County wishes to expedite construction of said Project.

H. County has prepared all appropriate environmental documents for the Project under the California Environmental Quality Act (CEQA). An Environmental Impact Notice of Exemption was filed on January 22, 2014.

I. District and County first entered into this Agreement on July 22, 2014.

J. This First Amended Agreement is needed because the District has requested additional work be added to the Project: upsizing pipeline and appurtenances from the original specifications, and extending the pipeline further to the next manhole downstream. Also, bids received by the County for the Project were higher than the engineer’s estimates. An additional $194,583 is needed to cover the expanded scope, and the term is being extended by six months.

K. This First Amended Agreement supersedes all previous agreements between the parties.
AGREEMENT

County and District agree as follows:

1. **RECITALS**
   A. The above recitals are true and correct.

2. **LIST OF ATTACHMENTS**
   A. The following attachments are attached hereto and incorporated herein:
      1) Attachment A: Estimated Project Costs
      2) Attachment B: Location Maps

3. **COORDINATION**
   A. County shall coordinate the work with District’s Project Manager. Contact information:

<table>
<thead>
<tr>
<th>District</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager: Kevin Booker</td>
<td>Contact: Janice Thompson</td>
</tr>
<tr>
<td>404 Aviation Boulevard</td>
<td>2300 County Center Drive, Suite B 100</td>
</tr>
<tr>
<td>Santa Rosa, CA 95403-9019</td>
<td>Santa Rosa, CA 95403</td>
</tr>
<tr>
<td>Phone: 707-521-1865</td>
<td>Phone: (707) 565-3609</td>
</tr>
<tr>
<td>Email: <a href="mailto:Kevin.Booker@scwa.ca.gov">Kevin.Booker@scwa.ca.gov</a></td>
<td>Email: <a href="mailto:Janice.Thompson@sonoma-county.org">Janice.Thompson@sonoma-county.org</a></td>
</tr>
</tbody>
</table>

4. **COUNTY’S RESPONSIBILITIES**
   County shall complete the following at its cost and expense, except to the extent of District funding provided for in Sections 5 and 6 below.
   A. **General**: County agrees to perform all work in accordance with the requirements of applicable federal, state, and local laws.
   B. **Permits**: County shall obtain any permits that may be necessary from utilities or regulatory agencies for construction of the Project.
   C. **Right-of-Way**: County shall acquire any and all additional land or easements as necessary for the construction of the Project.
   D. **Design and Surveying**: County shall design the Project including all design surveying and construction staking.
   E. **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.
   F. **Insurance Requirements and Indemnification Obligations**:
      1) Insurance Requirements:
         a) County shall use language in County’s Risk Management templates as the language for insurance requirements in the Bidding Documents, with the following modifications:
            a. The insurance shall name, “Sonoma County Water Agency, Sonoma Valley County Sanitation District, and County of Sonoma, their officers, agents and employees” as additional insureds.
            b. The insurance shall state, “Projects not near or over a body of water: $2,000,000 per pollution Incident; $2,000,000 Aggregate. If Contractor maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Contractor.”
b) County shall provide evidence of such insurance to District in a form satisfactory to District.

2) Indemnification Obligation of County’s Consultants and Contractors:
   a) County shall require its contractor to indemnify District and use the following language for indemnification requirements in the Bidding Documents:
      a. Contractor agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release Sonoma County Water Agency, Sonoma Valley County Sanitation District, and the County of Sonoma, their officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Contractor, arising out of or in connection with the performance of Contractor or its agents, employees, contractors, subcontractors, or invitees hereunder, whether or not there is concurrent negligence on the part of Sonoma County Water Agency, Sonoma Valley County Sanitation District, or County of Sonoma, but to the extent as may be required by law, excluding liability due to the sole negligence, active negligence, or willful misconduct of Sonoma County Water Agency, Sonoma Valley County Sanitation District, or County of Sonoma. 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 Contractor or its agents, employees, contractors, subcontractors, or invitees under Workers’ Compensation acts, disability benefit acts, or other employee benefit acts.
      b) County shall provide evidence of such indemnification to District in a form satisfactory to District.

3) County shall require its consultants, if any, to indemnify, defend and insure District to the same extent County requires its consultants to indemnify, defend, and insure County.

Bidding: County shall let Project to bid.

G. Construction: County shall construct the Project in accordance with the Final Plans and Specifications.

H. Contract Administration: County shall administer the contract for construction of the Project.

I. Inspection: County shall inspect the Project.

J. 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 a reproducible set to District within 45 calendar days of filing the Notice of Completion.

K. Title: All title to all Sanitation Improvements constructed pursuant to this Agreement shall vest with the District.

L. 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.

M. 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:
   1) Inspection and contract administration
   2) Construction costs
   3) Change orders

N. Invoices: County shall bill District for costs authorized under this Agreement, with an invoice that is clearly marked with “County of Sonoma, Funding of State Route 12 Corridor Improvement Project,” Project Activity Code V0090C018.
5. **DISTRICT’S RESPONSIBILITIES**

A. **Payment:** Upon execution of this Agreement by both parties, and receipt of a detailed invoice, District will prepare a journal voucher transfer in accordance with paragraph 4.N for $299,688 which is to finance 100 percent of District’s share of Sanitation Improvements costs.

B. **Review of Plans and Specifications:** District will review and comment on draft Project Plans and Specifications. District is not responsible for engineering decisions and District’s review is not a substitute for review and approval by the engineer in responsible charge of the Project.

6. **ADDITIONAL REQUIREMENTS**

A. **Term:** This Agreement shall expire on **December 31, 2016**.

B. **Excess Costs:** If the Sanitation Improvements costs exceed the total amount authorized under this Agreement, County shall:
   1) not award the Project; or
   2) fund Project costs in excess of the authorized amounts without additional contribution from District; or
   3) request additional funding from District. In such event, County shall submit a revised Sanitation Improvements cost estimate to District's General Manager with a written request, including reasons for cost overruns.

   District is under no obligation to approve such requests. If District’s General Manager determines that the revised costs are reasonable and that additional funds are available in District’s Sonoma Valley County Sanitation District accounts, District may, in its discretion, amend this Agreement to increase District’s contribution to Project pursuant to paragraph 6.C below. If District’s General Manager does not so determine, County shall proceed pursuant to paragraph 6.B.1 or 6.B.2 above.

C. **Authority to Amend Agreement:** Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of the agreement or significantly lengthen time schedules may be executed by the Sonoma County Water Agency’s General Manager in a form approved by County Counsel on behalf of the District, and the Director of Transportation and Public Works in a form approved by County Counsel on behalf of the County.

D. **Contract not Awarded:** If contract is not awarded, paragraphs 4.G through 4.K shall not apply.

E. **No Waiver of Breach:** The waiver by either party 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.

F. **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.
G. **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.

H. **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.

I. **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.

J. **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. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

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

L. **District Liability:** District is a separate legal entity from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. To the extent any work under this Agreement relates to District activities, County shall be paid exclusively from District funds. County agrees that it shall make no claim for compensation for County’s services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

7. **MUTUAL INDEMNIFICATION**

A. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers’ compensation acts, disability benefit acts, or other employee benefit acts.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

Reviewed as to funds:

By: ________________________________
   Water Agency Division Manager -
   Administrative Services

Reviewed as to substance:

By: ________________________________
   Water Agency General Manager

By: ________________________________
   Department Head
   Transportation and Public Works

Approved as to form:

By: ________________________________
   Cory O’Donnell, Deputy County Counsel

APPROVED:

Sonoma Valley County Sanitation District

By: ________________________________
   Chair, Board of Directors

Date: ________________________________

Attest:

By: ________________________________
   Clerk of the Board

APPROVED:

County of Sonoma

By: ________________________________
   Chair, Board of Supervisors

Date: ________________________________

Attest:

By: ________________________________
   Clerk of the Board
<table>
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<td>• Contingencies</td>
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<td>• inspection &amp; contract administration</td>
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ATTACHMENT B
Location Maps

STATE ROUTE 12