

TOWN OF SAN ANSELMO

STAFF REPORT

September 20, 2012

For the meeting of September 25, 2012

TO: Town Council

FROM: Gerhard Epke, Public Works Project Manager
Sean Condry, P.E., Public Works Director

SUBJECT: County Funding Agreement for Lansdale Fish Passage Project

RECOMMENDATION:

That Town Council approve and authorize the Public Works Director to sign the 'Funding Agreement between County of Marin and Town of San Anselmo' for a reimbursement to the Town of \$11,868 for the Lansdale Fish Passage Project.

BACKGROUND:

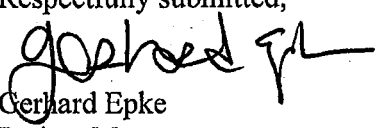
The Lansdale Fish Passage Project entails construction of a fish ladder and a retrofit to the culvert on San Anselmo Creek at Lansdale Station. This structure will remove a barrier to fish movement, both spawning of steelhead and movement upstream and downstream for young fish during the summer. This project was primarily funded through a grant from the California Department of Fish and Game (DFG) and is being managed by the Town with the help of Friends of Corte Madera Creek and Stetson Engineers. Construction is currently 90% complete.

Marin County Flood Control and Water Conservation District agreed to contribute \$11,868 cash and \$3,276 in-kind services. This funding was written into the original grant and has been budgeted for throughout the project. The County's cash contribution was intended to pay for management of the bidding process, which occurred in April. San Anselmo covered these expenses and is waiting to be reimbursed for that money. The County's in-kind services are to pay for inspections by an engineer and a fish passage expert.

FISCAL IMPACT

The grant San Anselmo received for this project was \$567,592. The total budget is \$632,291, which includes contributions from the Town, Friends of Corte Madera Creek, and Marin County. The County's total contribution to the project is \$15,114. This agreement will be used to reimburse San Anselmo for the County's cash contribution of \$11,868, which has already been incurred.

Respectfully submitted,


Gerhard Epke
Project Manager

Attachment 1. Funding Agreement Between County of Marin and Town of San Anselmo

**FUNDING AGREEMENT BETWEEN
COUNTY OF MARIN
AND
TOWN OF SAN ANSELMO**

This AGREEMENT is made this _____ day of _____, 201_, by and between the Marin County Flood Control and Water Conservation District, hereinafter referred to as "DISTRICT", a local public agency, and the Town of San Anselmo, hereinafter referred to as "RECIPIENT", a local public agency for the Lansdale Fish Passage Improvement Project ("Project").

RECITALS

WHEREAS, in response to the flood event of December 31, 2005 the DISTRICT, in cooperation with the City of Larkspur and the Towns of Fairfax, Ross, and San Anselmo initiated the Flood Zone 9 Ross Valley Flood Protection and Watershed Program (Program); and

WHEREAS, in June 2007 the property owners of Ross Valley voted to assess themselves a fee (Watershed Fee) that raises approximately \$2.2 million annually for 20 years for carrying out the Program; and

WHEREAS, the DISTRICT carried out a study to investigate the feasibility of creating a 100-year-flood level of protection resulting in the January 2011 "Ross Valley Capital Improvement Plan Study" (CIP Study) report by Stetson Engineers; and

WHEREAS, the report identifies a suite of over 180 projects that, when implemented in the appropriate sequence, will provide additional levels of flood protection for Ross Valley; and

WHEREAS, the adopted principles of Flood Zone 9 seek to "Do No Harm" to insure that improvements in one location do not increase the risk of flooding elsewhere; and

WHEREAS, the overall goal of the Program is to build or retrofit the necessary infrastructure to minimize damage from a 100-year-flood (as defined at the time of the CIP Study report in January 2011) while maintaining and improving the natural environment and important habitat and ecosystems; and

WHEREAS, the CIP Study is meant to guide flood-related work by the DISTRICT and the Towns and City so that efforts can be coordinated towards the common goal; and

WHEREAS, the DISTRICT wishes to create a mechanism whereby funding can be advanced, loaned, or granted to the Towns and City for work performed within and by their jurisdiction that is compliant and consistent with the projects and goals identified in the CIP Study;

NOW, THEREFORE, BE IT RESOLVED that the Town and the DISTRICT will agree to and abide by the following:

1. DEFINITIONS

“Eligible Project Costs” The reasonable and necessary actual costs, as defined in section 7 of this AGREEMENT, which are associated with the work described in Exhibit A.

“Eligible Expenses” The reasonable and necessary expenses associated with the Project as described herein and in Exhibit A.

2. PURPOSE FOR THE FUNDING. These funds are made available by the DISTRICT to the RECIPIENT to help finance the implementation of RECIPIENT’s flood control projects that are consistent with the DISTRICT’s overall goals. Funds may be used only as provided in the AGREEMENT for Eligible Project Costs associated with the work described in Exhibit A – Scope of Work, attached hereto and incorporated into this AGREEMENT.

3. TERM OF FUNDING AGREEMENT. The term of this AGREEMENT shall be from the latest date of execution by the DISTRICT through December 31, 2013.

4. PROJECT COST. The reasonable cost of the Project is estimated to be \$620,270. The DISTRICT approved funding for the Project is \$14,540 as set forth in Exhibit B – Budget, attached hereto and incorporated into this AGREEMENT.

5. PROJECT SCHEDULE. Funding recipient shall diligently perform or cause to be performed all Project work in accordance with the Project Schedule set forth in Exhibit C – Schedule, attached hereto and incorporated into this AGREEMENT, or as approved by the DISTRICT in writing.

6. LIMITS ON DISTRICTS FUNDS. Pursuant to the Ross Valley fee (Watershed Fee) and subject to the availability of funds, DISTRICT will provide funding to RECIPIENT in accordance with the terms of this AGREEMENT in an amount not to exceed \$14,540. Except as provided in Exhibit A, RECIPIENT will only be entitled to DISTRICT Funding for Eligible Projects Cost as defined in Paragraph 7 below. Funding RECIPIENT agrees to fund the difference, if any, between the actual Project costs and the amount provided by the DISTRICT to complete the Project. DISTRICT’S obligations hereunder shall not at any time exceed the amount approved and certified by the DISTRICT for the purpose and period stated in such certification. No funds shall be available under this AGREEMENT until the DISTRICT gives its certified prior written authorization

7. ELIGIBLE PROJECT COSTS. Eligibility for DISTRICT Funding to a flood control project, study, or design initiated by the Town will be based on the following general criteria:

- a) Compliance with the terms of the Watershed Fee ordinance adopted July 17, 2007 by the Board of Supervisors of the Marin County Flood Control and Water Conservation District;
- b) Conformity to the list of projects and program principles of the Ross Valley Flood Protection and Watershed Program’s CIP Study;
- c) Project must further the DISTRICT’s current, adopted goals and work program with respect to Flood Zone 9/Ross Valley Flood Protection and Watershed Program;
- d) All projects must comply with all local, state and federal laws and regulations; and
- e) A specific description of the Scope of Work and approved Cost/Budget will be incorporated into this agreement as “Exhibits”. Exhibit A will contain the Scope of Work

for the Project. Exhibit B will contain the Project Budget information including the amount to be granted herein. Exhibit C will contain the Schedule to complete the work. Exhibit D will contain any terms that are not part of this agreement or alterations to this agreement. The incorporated Exhibits will be considered a complete and legal addition to this AGREEMENT.

8. PROJECT APPROVAL. When requesting funds, the RECIPIENT must submit the Scope of Work, Budget, and Schedule and an explanation of the how the Project conforms to the CIP Study and the rationale for the amount being requested. RECIPIENT may not make any changes to the Scope of Work without prior written approval of DISTRICT. Approval by DISTRICT of a change of scope shall not constitute an increase in the funding amount unless additional funds are specifically approved in writing by DISTRICT.

9. PROJECT MANAGEMENT. RECIPIENT shall be responsible for the completion of the Project and shall provide management of consultant and contractor activities for which RECIPIENT contracts, including responsibility for schedule, scope, and budget, unless alternative agreement is agreed to in writing between RECIPIENT and DISTRICT and stated specifically in Exhibit D. RECIPIENT agrees to allow DISTRICT representatives access to the Project site for data collection and other necessary purposes.

10. PROJECT REVIEW. DISTRICT will have an opportunity to the review of designs and permits to assure that the Project conforms with the DISTRICT's principles and goals. RECIPIENT shall respond to and provide the DISTRICT with any requested Project information within 10 business days of its request.

11. ATTRIBUTION AND SIGNAGE & PRESS RELEASES. If any portion of DISTRICT funds are used for production of reports, acknowledgment of the DISTRICT Program's role shall be included in the documents. If any portion of DISTRICT funds is used for construction, RECIPIENT shall, upon initiation of field work or at the earliest feasible time thereafter, install and maintain a sign at the construction site identifying the Program and the use of the Ross Valley flood fee funds (e.g., DISTRICT's and RECIPIENT's logos). For non-construction capital purchases funded by any portion of DISTRICT funds, RECIPIENT may affix permanent signage identifying the "Ross Valley Flood Protection and Watershed Program" funds as a funding source. RECIPIENT shall notify DISTRICT in advance of any press releases about Project and program activities, particularly groundbreakings and ribbon cuttings, in connection with DISTRICT funds expended under this AGREEMENT.

12. COMPLIANCE WITH LAW. In the performance of its obligations pursuant to this AGREEMENT, RECIPIENT shall comply with all applicable federal, state and local laws, ordinances and regulations in any manner affecting the performance of this AGREEMENT, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

13. ENVIRONMENTAL COMPLIANCE. RECIPIENT shall be solely responsible for complying with and implementing all environmental mitigation measures that may be identified as commitments in applicable documents (such as environmental assessments, environmental impact statements and reports, and memoranda of agreement) and comply with any conditions imposed as a part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in this AGREEMENT by reference. RECIPIENT shall be responsible for obtaining all necessary environmental permits for performance of work.

14. FINANCES. All eligible costs charged to the Project shall be supported by properly prepared and documented time records, invoices, and/or vouchers.

15. RECORDS. All checks, payrolls, invoices, contracts, vouchers, journal entries, work orders, or other accounting documents pertaining in whole or in part to the Project shall be maintained by RECIPIENT for a period of 10 Years, which is the DISTRICT's legal record retention period.

16. REIMBURSEMENTS. Payment will be made each quarter, upon receipt by the DISTRICT of an invoice and all supporting documents, unless another arrangement is agreed to in writing by RECIPIENT and the DISTRICT. Reimbursement will not be provided by the DISTRICT unless previously agreed to in writing by both parties.

17. ELIGIBLE EXPENSES. RECIPIENT shall expend funds only on Eligible Expenses described in Exhibit A or agreed to in writing by DISTRICT.

18. AUDITS. DISTRICT reserves the right to request an audit for any reason. If RECIPIENT is subject to third party financial audit requirements, copies of audits performed in fulfillment of such requirements shall be provided to the DISTRICT.

19. PROCEDURES AND REPORTS. RECIPIENT shall provide to DISTRICT a Semi-Annual Report in a format approved by DISTRICT.

20. REPAYMENT OF INELIGIBLE COSTS. DISTRICT will not pay RECIPIENT for costs that are not considered Eligible Costs under this AGREEMENT. The DISTRICT may withhold funds if it determines that the RECIPIENT is not in compliance with the terms of this AGREEMENT or the principles and goals of the Program at any time during the planning, design, environmental permitting, construction and/or post-construction phases of a project.

21. RIGHT TO WITHHOLD

- a) Conditions of Withholding. If DISTRICT determines that the Project is not being implemented substantially in accordance with the provisions of this AGREEMENT, or the RECIPIENT has failed in any other respect to substantially comply with the provisions of this AGREEMENT and RECIPIENT does not remedy any such failure to DISTRICT satisfaction, DISTRICT may withhold from RECIPIENT all or any portion of the funding commitment and take any other action that it deems necessary to protect its interests.
- b) If DISTRICT notifies RECIPIENT of its decision to withhold the entire funding amount pursuant to 21(a), this AGREEMENT shall terminate upon receipt of such notice by RECIPIENT and the DISTRICT shall no longer be required to provide funds under this AGREEMENT.
- c) Where a portion of the Funding Commitment has been disbursed to RECIPIENT and DISTRICT notifies RECIPIENT of its decision not to release funds that have been withheld pursuant to paragraph 21(a), the portion that has been disbursed shall thereafter be repaid immediately. Refusal of RECIPIENT to repay may, at the option of DISTRICT be considered a breach of this AGREEMENT and may be treated as a Termination for Cause under paragraph 23.

22. RESCISSION OF AUTHORIZATION OF FUNDS. DISTRICT may adjust its allocation at any time with RECIPIENT's written concurrence. DISTRICT reserves the right to rescind its

authorization of any unused or unneeded funds prior to, or at the time of PROJECT closeout.

23. TERMINATION FOR CAUSE. RECIPIENT agrees that, upon ten (10) working days written notice, DISTRICT may suspend or terminate all or part of the financial assistance provided herein for failure to correct a breach of this AGREEMENT.

24. CORRECTION OF BREACH. For purposes under this section, a breach shall be defined as a violation of any section of this AGREEMENT. With respect to any breach, RECIPIENT shall have five (5) working days from the date of notice of breach to cure the breach.

25. LIABILITY, INDEMNIFICATION AND GENERAL LIABILITY

25.1 Indemnification. RECIPIENT shall indemnify, protect, defend and hold harmless the DISTRICT from and against any and all losses arising from, in connection with or caused by RECIPIENT's performance of this AGREEMENT, including, but not limited to, the following: (a) a material breach of this AGREEMENT by RECIPIENT; (b) a material breach of any representation or warranty of RECIPIENT contained in this AGREEMENT; (c) any personal injury or death caused, directly or indirectly, by any act or omission of RECIPIENT or its employees, sub-grantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of RECIPIENT or its employees, sub-grantees or agents; (e) The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and DISTRICT'S costs of investigating any claims against DISTRICT.

25.2 Duty to Defend; Notice of Loss. RECIPIENT acknowledges and agrees that its obligation to defend the DISTRICT herein: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any loss which actually or potentially falls within the scope of the above stated section, regardless of whether the allegations asserted in connection with such loss are or may be groundless, false or fraudulent; and (c) arises at the time the loss is tendered to RECIPIENT by the DISTRICT and continues at all times thereafter. The DISTRICT shall give RECIPIENT prompt notice of any loss above stated section and RECIPIENT shall have the right to defend, settle and compromise any such loss; provided, however, that the DISTRICT shall have the right to retain its own counsel at the expense of RECIPIENT if representation of DISTRICT by the counsel retained by RECIPIENT would be inappropriate due to conflicts of interest between the parties. DISTRICT'S failure to notify RECIPIENT promptly of any loss shall not relieve RECIPIENT of any liability unless such failure materially impairs RECIPIENT's ability to defend such loss. RECIPIENT shall seek the DISTRICT'S prior written consent to settle or compromise any loss if RECIPIENT contends that DISTRICT shares in liability with respect thereto.

25.3 Incidental and Consequential Damages. Losses covered under the above sections shall include any and all incidental and consequential damages resulting in whole or in part from RECIPIENT's acts or omissions. Nothing in this AGREEMENT shall constitute a waiver or limitation of any rights that DISTRICT may have under applicable law with respect to such damages.

25.4 LIMITATION ON LIABILITY OF DISTRICT. DISTRICT's obligations under this AGREEMENT shall be limited to the aggregate amount of grant funds actually disbursed hereunder. Notwithstanding any other provision contained in this AGREEMENT or any other document or communication relating to this AGREEMENT, in no event shall district be liable, regardless of whether any claim is based on contract or tort, for any special, consequential,

indirect or incidental damages, including lost profits, arising out of or in connection with this AGREEMENT, the grant funds, the grant plan or any activities performed in connection with this AGREEMENT.

26. OBLIGATIONS. Termination of financial assistance under this AGREEMENT will not invalidate obligations properly incurred by RECIPIENT before the termination date; to the extent those obligations cannot be canceled.

27. INTEGRATION. This AGREEMENT represents the entire AGREEMENT of the parties with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

28. AMENDMENT. Except as otherwise provided herein, this AGREEMENT may not be changed, modified or rescinded except in writing and approved by all parties hereto. This AGREEMENT may be amended by a designated official from each agency.

29. INDEPENDENT AGENCY. RECIPIENT performs the terms and conditions of this AGREEMENT as an entity independent of DISTRICT. None of RECIPIENT'S agents or employees shall be agents or employees of DISTRICT. Funding RECIPIENT is acting in an independent capacity and is solely responsible for the Project. Review or approval of plans, specifications, or other implementation documents by DISTRICT is solely for the purpose of proper administration to funds by DISTRICT and shall not be deemed to relieve or restrict RECIPIENT'S responsibility for the operation, management or control of the Project or facility.

30. ASSIGNMENT. The AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

31. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES. This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of RECIPIENT. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

33. SEVERABILITY. Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this AGREEMENT, which shall continue in full force and effect; provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

34. ACCEPTANCE OF DISTRICT FUNDS. RECIPIENT does hereby declare that all written statements, representations, covenants, and materials submitted as a condition of this AGREEMENT are true and correct and does hereby accept DISTRICT funds and/or management, engineering, or administrative support, and agrees to all of the terms and conditions of this AGREEMENT. The parties have executed this AGREEMENT as of the date first written above.

35. RELATIONSHIP OF PARTIES. RECIPIENT is acting in an independent capacity and is solely responsible for the evaluation, review, approval of plans specifications, construction and implementation of the PROJECT. Review or approval of plans, specifications, or other implementation documents by DISTRICT is solely for the purpose of proper administration of funds by DISTRICT and shall not be deemed to relieve or limit RECIPIENT'S responsibility.

36. SUCCESSORS; NO THIRD-PARTY BENEFICIARIES. Nothing in this AGREEMENT, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this AGREEMENT or any covenants, conditions or provisions contained herein.

37. RESOLUTION OF SIGNATORY AUTHORITY REQUIRED. Upon request of DISTRICT, RECIPIENT shall deliver to DISTRICT a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this AGREEMENT, certified as true, accurate and complete by the appropriate authorized representative of RECIPIENT.

38. SURVIVAL OF TERMS. The obligations of RECIPIENT, the terms and duties agreed upon by RECIPIENT in this AGREEMENT shall survive and continue following expiration or termination of this AGREEMENT:

DISTRICT:

RECIPIENT:

By: _____

By: _____

Print Name

Print Name

Print Title

Print Title

Approved as to form:

Approved as to form:

By: _____
District Counsel

By: _____
Town Attorney

Exhibit A – Scope of Work

The DISTRICT committed to providing matching funds for implementation of the Project for the following tasks:

Task 1: Manage Bid Process: The DISTRICT will pay for a contractor to manage the bid process: Prepare front-end bid documents, advertise the request for bids, conduct pre-bid meeting, answer contractor questions, provide bid packages, conduct public bid opening, check contractor references, and advise in selection of the contractor; and

Task 3: Review Project During Construction
A DISTRICT Engineer and a fish passage expert will review the Project during construction.

Exhibit B – Budget

Task 1 Budget:

| | | | |
|-------------|--------|----------|----------|
| Supervisor | 20 hrs | \$173/hr | \$ 3,460 |
| Associate I | 40 hrs | \$105/hr | 4,200 |
| Management | 40 hrs | 95/hr | 3,800 |
| Admin I | 6 hrs | 68/hr | 408 |

Total Task 1 \$ 11,868

Task 3 Budget

| | | | |
|---------------------|--------|------------|----------|
| Fish passage expert | 30 hrs | \$55.25/hr | \$ 1,658 |
| Engineer | 15 hrs | \$57.47/hr | 862 |

Subtotal \$ 2,520

30% Benefits 756

Total Task 3 \$ 3,276

Total District Contribution \$ 15,114

Exhibit C – Schedule

The work will be completed by December 31, 2012.

Exhibit D – Modification to Roles and Responsibilities

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