



TOWN OF FAIRFAX

STAFF REPORT

October 7, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Approve an agreement with the Marin County Flood Control and Water Conservation District for the Town to be reimbursed for “out-of-pocket” environmental and project management costs associated with the Azalea Avenue Bridge replacement project

RECOMMENDATION

Authorize the Town Manager to execute an agreement with the Marin County Flood Control and Water Conservation District (Marin County) for the Town to be reimbursed up to \$65,000 for “out-of-pocket” environmental and project management costs associated with the Azalea Avenue Bridge replacement project.

DISCUSSION

The Azalea Avenue Bridge replacement project is one of six bridge projects included the Town’s FY15-16 Capital Improvement Program. The Azalea Avenue Bridge is also identified as “baseline measure” in the 10-Year Work Plan adopted by the Ross Valley Flood Control District 9 Advisory Board (Flood District 9). The District policy for a “baseline measure” project is that a Town can be reimbursed up to 30% of eligible project costs. As a result, the Town is eligible to be reimbursed for out-of-pocket expenses for the Azalea Ave. Bridge project.

While most of the Azalea project’s environmental, design, and construction costs are covered by state and federal grants, some expenses are not eligible for reimbursement under the grants such as CEQA and RFP costs. We estimate that total “out-of-pocket” expenses will be less than \$65,000 for this project. This agreement with Marin County will allow the Town to be reimbursed for the estimated “out-of-pocket” expenses for the Azalea Ave. Bridge Replacement Project.

FISCAL IMPACT

Funding for the Azalea Avenue Bridge Replacement Project is included in the FY15-16 CIP budget.

ATTACHMENT

Agreement

AGENDA ITEM # 1

**FUNDING AGREEMENT BETWEEN
MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
TOWN OF FAIRFAX
REGARDING THE AZALEA AVENUE BRIDGE REPLACEMENT PROJECT**

This FUNDING AGREEMENT (AGREEMENT), made and entered into this ____ day of _____, 201_, by and between the Marin County Flood Control and Water Conservation District, hereinafter referred to as "DISTRICT", and the Town of Fairfax, hereinafter referred to as "RECIPIENT", both in the State of California, collectively the "PARTIES", for Phase One of the Azalea Avenue bridge replacement project.

SECTION 1: RECITALS

1. In response to the flood event of December 31, 2005, the DISTRICT, in cooperation with the Towns of San Anselmo, Ross, and Fairfax; the City of Larkspur and the unincorporated communities of Kentfield, Greenbrae, Sleepy Hollow and Oak Manor initiated the Flood Zone 9 Ross Valley Flood Protection and Watershed Program (PROGRAM);
2. In June 2007, the property owners of Ross Valley voted to assess themselves a storm drainage fee (Watershed Fee) that raises approximately \$2.2 million annually for 20 years for carrying out the PROGRAM;
3. 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 Inc.;
4. The CIP Study is meant to guide flood-related work by the DISTRICT and the Towns/City/Unincorporated Areas so that efforts can be coordinated toward the common goal;
5. The report identified over 180 projects and improvements that, when implemented in the appropriate sequence, will provide a high level of flood protection for Ross Valley;
6. The overall goal of the PROGRAM is to build or retrofit the necessary infrastructure to minimize or greatly reduce 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;
7. The CIP Study identifies opportunities to reduce the frequency and severity of flood damage by replacing the bridges that cross the creek with configurations that are less constricting to design flows;
8. The CIP Study identifies the bridge at Azalea Avenue to be replaced;
9. In March 2012, the Ross Valley Flood Control Zone 9 Advisory Board adopted the 10-Year Work Plan to set near-term goals and to focus initial implementation of CIP Study measures to provide a 25-year level of flood protection valley-wide;

10. The 10-Year Work Plan (10 YWP) lists the replacement of the existing bridge at Azalea Avenue (PROJECT) as a “baseline measure” to be implemented among the full list of projects and measures in the 10YWP;
11. The RECIPIENT has identified the need for significant repair, replacement, and improvement of the existing bridge;
12. The RECIPIENT wishes to accept a grant from the California Department of Transportation (GRANTOR), known as CALTRANS, for 100% of the estimated cost to replace the Azalea Avenue bridge;
13. The RECIPIENT wishes to accept the funding and initiate feasibility confirmation, planning, design, and construction of the PROJECT;
14. As per the GRANTOR funding agreement, the RECIPIENT is responsible for contributing 0% of the cost for the PROJECT, with the exception that the RECIPIENT may be responsible for CEQA study costs and project management costs to provide broad oversight, submittal review, process payments and other services, as needed;
15. In the interest of reserving funding for all top projects in the 10 YWP, the Principles of the PROGRAM were adopted by the Flood Zone 9 Advisory Board in December, 2013 to guide financial commitments of the flood zone in implementation of the PROGRAM;
16. The Principles state that grant funding for 70% of the estimated cost of all projects shall be pursued;
17. The PARTIES agree the DISTRICT’s commitment in Phase One of the PROJECT is limited to a maximum of 30% of the Eligible Costs, as defined in Section 6 below;
18. The PARTIES agree that the PROJECT will progress through two (2) distinct phases: Phase One for Planning, Preliminary Design, California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) compliance, Final Engineering Design and Environmental Permits, right-of-way certification; and Phase Two for Construction;
19. Should the PROJECT be terminated before completion, all costs incurred before and up to that date of termination may be the sole responsibility of the PARTIES, per the GRANTOR’s funding agreement, and any funds reimbursed by GRANTOR up to that point may need to be returned to the GRANTOR;
20. If the PROJECT is terminated before completion and any funds paid to the RECIPIENT by the GRANTOR must be returned to the GRANTOR per the GRANTOR’s funding agreement, the RECIPIENT is responsible for reimbursing the GRANTOR. In this case, the DISTRICT shall not seek reimbursement for any and all disbursed contributions by the DISTRICT or for any pending contributions of the DISTRICT’s share of Eligible Costs incurred prior to termination that are otherwise owed to the RECIPIENT;
21. The PARTIES agree that the RECIPIENT shall manage all aspects of project development, completing the design, compliance with the environmental and permitting requirements, and carrying out any and all work on the PROJECT;
22. The PARTIES agree that a subsequent agreement or addenda to this agreement shall be executed for Phase Two of the PROJECT, if needed;

23. The PARTIES agree that the DISTRICT shall work as a partner during Phase One of this effort with the RECIPIENT.

SECTION 2: PURPOSE OF THE FUNDING AGREEMENT

This AGREEMENT is entered into by and between the PARTIES to establish the level of funding to be provided by each of the PARTIES for Phase One of the PROJECT and to define the responsibilities of the PARTIES for the implementation of the PROJECT.

SECTION 3: PROJECT DEFINITION AND SCOPE

This AGREEMENT shall provide funding from the revenues received from the Flood Control Zone 9 Watershed Fee according to the uses and purposes stated in the fee ballot measure adopted by the DISTRICT Board of Supervisors on May 1, 2007. Funding is provided for the replacement of the following bridge:

- Azalea Avenue Bridge

Phase One includes all costs related to the PROJECT's development up to 100% design and permitting. Phase One includes:

- Surveys, mapping and right-of-way engineering
- Traffic analysis, alternatives development, hydraulic analysis, environmental technical studies and public outreach meetings
- Environmental Document and Mitigation Monitoring Plan
- CEQA/NEPA clearance and project report
- Geotechnical and hydraulic reports
- Right-of-way certification
- 100% plans, specifications and estimate (PS&E)
- Project management (PM)

The RECIPIENT has estimated the cost of Phase One for:

- **Azalea Avenue Bridge replacement to be \$710,000**

SECTION 4: FUNDING LEVELS

The DISTRICT shall contribute funds in an amount consistent with the Principles and Goals of the PROGRAM.

The expected distribution of contributed funds is:

- Azalea Avenue Bridge:
The DISTRICT shall contribute 100% of CEQA cost: = **\$30,000**
The DISTRICT shall contribute 100% of PM cost: = **\$35,000**
The GRANTOR shall contribute 100% of all other Eligible costs: = **\$645,000**

Advanced funds shall not be provided by the DISTRICT to the RECIPIENT. Reimbursement of PROJECT costs and expenses shall be calculated based on a concurrent drawdown among the contributors of funds according to the funding levels above.

SECTION 5: RESPONSIBILITIES

1. The RECIPIENT Shall:

- 1.1. Undertake the Azalea Avenue bridge replacement project and enter into the Funding Agreement as the responsible party with the GRANTOR;
- 1.2. Undertake and manage all tasks, including but not limited to, administration, planning, hiring of consultants, town ordinance requirements, policy issues, public outreach, feasibility confirmation, engineering design, environmental review (CEQA and NEPA), permitting, bidding, construction, construction management and all actions necessary to complete all aspects of the PROJECT;
- 1.3. Apply to the GRANTOR for reimbursement of all costs incurred to complete NEPA clearance and report for the PROJECT. It is understood that costs required to complete the CEQA process and documentation are not reimbursable by the GRANTOR;
- 1.4. Apply to the GRANTOR for reimbursement of all costs incurred for project management and that shall include issuing Requests for Proposal (RFP), and selection of design consultants and construction contractors.
- 1.5. Contribute cash funds to the PROJECT to be reimbursed by the GRANTOR and DISTRICT as shown in Section 4;
- 1.6. Lead the effort to secure supplemental grants in partnership with the DISTRICT;
- 1.7. Work cooperatively with the DISTRICT to ensure that all opportunities for combining tasks and economization of tasks that may be occurring elsewhere in the PROGRAM are pursued;
- 1.8. Conduct the PROJECT in accordance with the Principles and Goals of the PROGRAM;
- 1.9. Be the Point of Contact (POC) for all inquiries about the PROJECT through all phases of the PROJECT;
- 1.10. Coordinate all supplemental grant applications with the DISTRICT to ensure there is no duplication of effort and to maximize eligibility and competitiveness;
- 1.11. Contact and coordinate with DISTRICT staff to obtain existing data needed to complete the PROJECT;
- 1.12. Prior to execution of any consultant contract(s) and/or agreement(s) as part of the PROJECT, provide the DISTRICT the opportunity to review and comment on the Scope of Work and other Exhibits and Attachments in the contract and incorporate mutually agreed changes;

- 1.13. Ensure that ownership by the RECIPIENT of all deliverables is secured in any Professional Services contract with third parties and agree to mutual ownership by the PARTIES of all generated materials, data, drawings, and figures used during the application, design, and CEQA processes;
- 1.14. Circulate to the DISTRICT any press releases or similar media-focused release for review and comments by the DISTRICT prior to release;
- 1.15. Identify the "Flood Zone 9/Ross Valley Flood Protection and Watershed Program" as a contributing partner in all signage and informational materials;

2. The DISTRICT Shall:

- 2.1. Reimburse RECIPIENT for Eligible Costs for the PROJECT up to the amounts given in Section 4.
- 2.2. Make available to the RECIPIENT and its consultant(s) any and all available data District has in its possession needed to design and construct the project.
- 2.3. Provide a Letter of Financial Support to be included in the Funding Agreement that confirms the availability of the sufficient funds for the local match requirement.
- 2.4. Work cooperatively with the RECIPIENT to ensure that all opportunities for combining and economizing efforts and tasks that may be occurring elsewhere in the PROGRAM are pursued;
- 2.5. Work with the RECIPIENT to conduct an effective public outreach effort with respect to all phases of the PROJECT;
- 2.6. Coordinate all supplemental grant applications with the RECIPIENT to avoid unnecessary duplication of effort and to maximize eligibility and competitiveness.
- 2.7. Provide technical review of all phases of design and provide comments within two (2) weeks of receiving the documents;

SECTION 6: GENERAL PROVISIONS

1. DEFINITIONS.

1.1 "Eligible Costs". The reasonable and necessary actual costs and expenses, subject to Section 6, Subsection 6 of this AGREEMENT, that are associated with the work described in Section 3.

2. PURPOSE FOR THE FUNDING. All funds are provided by the DISTRICT to the RECIPIENT for the RECIPIENT's Eligible Costs in implementing the PROJECT only;

3. TERM OF FUNDING AGREEMENT. The term of this AGREEMENT shall be from the latest date of execution by the DISTRICT, being November 17, 2015 through November 17, 2020;

4. PROJECT SCHEDULE. RECIPIENT shall perform, or cause to be performed, all Phase One work according to the Work Plan, Budget, and Schedule attached as Exhibits to the executed Grant Funding Agreement between the RECIPIENT and GRANTOR.

5. LIMITS ON DISTRICTS FUNDS. Pursuant to the Ross Valley fee (Watershed Fee) and subject to the availability of funds, DISTRICT shall provide funding to RECIPIENT in accordance with the terms of this AGREEMENT in an amount not to exceed the amounts specified in Section 4 and in no event more than 30% of the total Eligible Costs of the PROJECT and subject to the availability of funds. RECIPIENT shall only be entitled to DISTRICT funding for Eligible Costs, as defined in Subsection 6.1, above, and subject to Section 6, Subsection 6 below. DISTRICT's obligations hereunder shall not at any time exceed the amount approved by the DISTRICT for the purpose and period stated in the approval. No additional funds shall be available under this AGREEMENT.

6. ELIGIBLE COSTS. Eligibility for DISTRICT funding for a flood control project, grant application, study, or design initiated by the RECIPIENT shall be limited under this AGREEMENT to Phase One of the PROJECT and shall be subject to the following general criteria:

- 6.1 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
- 6.2 Conformance with the list of projects in the Adopted 10-Year Work Plan and to the Adopted Principles and Goals of the PROGRAM
- 6.3 Compliance with all local, state and federal laws and regulations

7. FUNDING REQUEST APPROVAL. The Scope of Work, Budget, and Schedule for the Funding Agreement between the GRANTOR and the RECIPIENT shall be incorporated into this AGREEMENT as Exhibit A. RECIPIENT shall notify the DISTRICT of any changes to Exhibit A concurrent with discussions and negotiations with the GRANTOR. A change in Exhibit A, including any increase in the funds the DISTRICT is required to provide, is not valid unless approved by the DISTRICT in writing.

8. INFORMATION REQUESTS. RECIPIENT shall respond to and provide the DISTRICT with any requested PROJECT information within ten (10) working days of its request.

9. 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 that in any manner affect 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.

10. ENVIRONMENTAL COMPLIANCE. RECIPIENT shall be solely responsible for obtaining, complying with, and implementing all environmental and regulatory permits necessary for the progress and completion of the PROJECT.

11. FINANCES. All Eligible Costs charged to the DISTRICT shall be supported by properly prepared and documented time records, invoices, and/or vouchers. Invoices submitted by the RECIPIENT shall include the following information:

- a) Costs incurred for work performed in implementing the PROJECT during the period identified in the particular invoice.
- b) Invoices shall meet the following format requirements:

Funding Agreement– Fairfax Highway Bridge Project

- i. Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
- ii. Invoices must be itemized based on the categories (i.e., tasks) specified in the Funding Agreement between the RECIPIENT and the GRANTOR. The amount claimed for salaries, wages, and consultant fees shall include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
- iii. Sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
- iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the DISTRICT and those costs that represent GRANTOR costs, as set forth in Section 4.
- v. Original signature and date (in ink) of RECIPIENT's Project Manager.

12. MONTHLY STATUS REPORTS. RECIPIENT shall submit Monthly Status Reports to meet the DISTRICT's requirement for disbursement of funds. Monthly Status Reports shall, in part, provide a brief description of the work performed, milestones achieved, any accomplishments, any problems encountered, schedule status, and budget status in the performance of the work under this AGREEMENT during the reporting period.

13. 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 from the date of project completion, which is the DISTRICT's legal record retention period.

14. REIMBURSEMENTS. Payment by the DISTRICT to the RECIPIENT will be made within thirty (30) days upon receipt by the DISTRICT of an acceptable invoice and all supporting documents, and a monthly status report

15. ELIGIBLE COSTS. RECIPIENT shall expend funds only on Eligible Costs, as defined in Subsection 6.1 and according to the criteria in Subsection 6.6 or as agreed to in writing by DISTRICT.

16. REPAYMENT OF INELIGIBLE COSTS. DISTRICT shall not pay RECIPIENT for costs that are not considered Eligible Costs under this AGREEMENT.

17. 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.

18. RIGHT TO WITHHOLD. The DISTRICT may withhold funds if it determines that the RECIPIENT is not in compliance with the terms of this AGREEMENT or;

18.1 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, the adopted Principles and Goals of the PROGRAM, or the Adopted 10-Year Work Plan of the PROGRAM, the DISTRICT shall immediately notify RECIPIENT in writing of any such failure and shall specify the required remedy. If RECIPIENT does not remedy any such failure to the DISTRICT'S satisfaction, within ten (10) working days, 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.

18.2 If DISTRICT notifies RECIPIENT of its decision to withhold the entire funding amount pursuant to 18.1, 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.

19. RESCISSION OF AUTHORIZATION OF FUNDS. DISTRICT may adjust the amount of its contribution of funds at any time. DISTRICT reserves the right to rescind its authorization, and therefore its obligation to contribute funds, to the elements of the PROJECT that are rescinded.

20. TERMINATION

20.1. **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.

20.2. **TERMINATION OF AGREEMENT.** RECIPIENT agrees that, upon ten (10) working days written notice, DISTRICT may suspend or terminate all or part of the financial assistance provided herein if for any reason the DISTRICT determines the PROJECT is infeasible.

21. 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 ten (10) working days from the date of notice of breach to cure the breach.

22. LIABILITY, INDEMNIFICATION AND GENERAL LIABILITY

22.1. **Indemnification.** RECIPIENT shall indemnify, protect, defend and hold harmless the DISTRICT from and against any and all losses arising from, in connection with 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. The foregoing indemnity obligation shall not apply to losses arising from the sole negligence and willful misconduct of the DISTRICT. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys (including those incurred in-house), consultants and experts and related costs, and DISTRICT'S costs of investigating any claims against DISTRICT.

22.2. **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 covered by the 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.

22.3. 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.

23. LIMITATION ON LIABILITY OF DISTRICT. DISTRICT'S liability obligations under this AGREEMENT shall be limited to the aggregate amount of funds actually disbursed by the DISTRICT 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.

24. OBLIGATIONS. Termination of this AGREEMENT will not invalidate the indemnification obligations of RECIPIENT to DISTRICT and/or obligations properly incurred by RECIPIENT before the termination date to the extent those obligations cannot be canceled.

25. 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.

26. AMENDMENT. Except as otherwise provided herein, this AGREEMENT may not be changed, modified or rescinded except in writing and approved by all parties hereto.

27. INDEPENDENT AGENCY. RECIPIENT performs the terms and conditions of this AGREEMENT as an entity independent of DISTRICT. RECIPIENT'S agents or employees shall not be agents or employees of DISTRICT. The RECIPIENT is acting in an independent capacity and is solely responsible for the PROJECT. Review or approval of all PROJECT-related documents by DISTRICT is solely for the purpose of proper administration of funds by DISTRICT and shall not be deemed to relieve or restrict RECIPIENT'S responsibility for the preparation, submission, management, or control of the PROJECT.

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

29. 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.

30. 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.

31. 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.

32. RELATIONSHIP OF PARTIES. RECIPIENT is acting in an independent capacity and is solely responsible for the contracting of consultant services, public outreach, preparation of the concept design, management of the preparation and on-time completion of the PROJECT, and the submission of all products of this PROJECT process the DISTRICT as described above.

33. 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.

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

35. 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.

Statement of Agreement

It is mutually agreed and understood that, upon signing of this AGREEMENT:

The PARTIES agree to cooperate and coordinate efforts for the Phase One planning and design of the PROJECT.

Contacts and Notices

All notices under this AGREEMENT shall be in writing delivered to the parties by hand, by commercial courier service, or by United States mail, postage prepaid, addressed to the parties at the addresses set forth below or such other addresses as the parties may designate by notice.

For RECIPIENT:

Garrett Toy
Town Manager
Town of Fairfax
142 Bolinas Rd
Fairfax, CA 94903
Phone: (415) 458-2345
Email: gtoy@townoffairfax.org

For DISTRICT:

Scott Lyle
Capital Planning and Program Manager
Marin County Flood Control and Water Conservation District
3501 Civic Center Drive, Room 404
San Rafael, California 94903
Phone: (415) 473-6215
Email: style@marincounty.org

Duration and Termination

The terms of this AGREEMENT shall remain in full force and effect for 5 years from the date adopted and signed. This AGREEMENT may be renewed by the mutual consent of all parties.

DISTRICT:

RECIPIENT:

By: _____

By: _____

Print Name

Print Name

Print Title

Print Title

By:

District Counsel

By:

Town Attorney

Exhibit A

Exhibit A

Project Scope:

Phase One: Preliminary Engineering (PE) Phase, including Field Review, environmental clearance, and design work necessary to replace Azalea Avenue Bridge (No. 27C-0142) in Fairfax. Design will comply with all state and federal environmental and design requirements and will result in set of bid-ready PS&E package to be submitted to the Town and Caltrans for construction approval. The project also includes consultant selection and management, as well as construction bid advertisement and consultant selection for management of bridge construction. The latter will be the Phase Two and subject to a new addendum in the future based on the actual construction bid amount.

Budget

Caltrans Authorized Amount - Field Review: \$15,000

Caltrans Authorized Amount - Phase 1 PE: \$415, 450 less above \$15,000 = \$400,450

Estimated total amount needed for PE Phase: \$645,000 (to be updated and requested of Caltrans after consultant selection)

Estimated CEQA Cost: \$30,000

Project Management (Acting Public Works Director, Fairfax) Cost: \$35,000

Schedule

Field Review: October 13, 2015

Consultant selection – January 2016

Final Environmental Documents (CEQA and NEPA) – December 2017

Final Design - February 2018

Permits – March 2018

Bid and Advertisement - March 2018

Begin construction - April 2018