

## Attachment 1

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TW 17/18-116B

### **Second Amended Agreement for Northern Sonoma County Water Conservation Program (Proposition 84, Round 3)**

This second amended agreement (“Second Amended Agreement” or “Agreement”) is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California (“Sonoma Water”) and **City of Santa Rosa**, a government agency (“City”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Article 8 (Term of Agreement).

#### **RECITALS**

- A. The purpose of the Northern Sonoma County Water Conservation Program (“Program”) is to reduce demands, increase local resiliency, and expand water conservation programs for water utilities in northern Sonoma County that have been affected by drought conditions. The Program will provide rebates and direct customer education on water efficiency. High levels of participation are expected based on past programs. The Program expands the Sonoma-Mendocino Immediate Drought Relief Project.
- B. The Integrated Regional Water Management Grant Program, administered by the California Department of Water Resources, provides funding for programs that assist local public agencies to meet long-term water needs of the state, including the delivery of safe drinking water and the protection of water quality and the environment. This Program is financed under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, administered by the State of California, Department of Water Resources (“State”).
- C. Entities participating in the grant include, but are not limited to, City of Santa Rosa, City of Rohnert Park, City of Cotati, Town of Windsor, Sweetwater Springs, County of Sonoma Transportation and Public Works, City of Cloverdale, and City of Healdsburg, as well as residents on private wells (collectively, “Participating Agencies”).
- D. Sonoma Water was awarded \$475,031 by the State to administer and implement the Program for Participating Agencies. Participating Agencies and Sonoma Water have committed to provide an additional \$577,028 in non-State matching funds, for a total project cost of \$1,052,059.
- E. The Participating Agencies are committed to water use efficiency to ensure adequate water supply during future drought periods.
- F. Grant reporting from other Participating Agencies indicates that a portion of funding allotted to those entities has not been used. City can use a portion of this funding on measures already completed by reallocating funding. The first amended agreement modified the not-to-exceed amount to reflect total available funds and extended the agreement term.

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- G. Grant-funded measures and program details from State have been modified. This Second Amended Agreement reflects those changes.
- H. This Second Amended Agreement supersedes all previous agreements between the parties.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### **AGREEMENT**

#### **1. RECITALS**

- 1.1. The above recitals are true and correct.

#### **2. LIST OF EXHIBITS**

- 2.1. The following exhibits are attached hereto and incorporated herein:
  - a. Exhibit A: Program Scope
  - b. Exhibit B: Schedule of Program Costs
  - c. Exhibit B-1: Amended Schedule of Reimbursable Program Costs
  - d. Exhibit C: Insurance Requirements
  - e. Exhibit D: Grant Award Documents for FP-00101 (Section D - Standard Conditions from Grant Agreement No. 4600011484)
  - f. Exhibit E: Quarterly Reporting Form

#### **3. DEFINITIONS:**

- 3.1. For the purposes of this Agreement, the following terms and definitions shall be used:
  - a. Participants. City-approved water customers who apply to participate in Program Measures as described in Exhibit A.
  - b. Grant-Funded Measures. Water conservation incentives described in Exhibit A that are funded by Department of Water Resources Proposition 84 grant.
    - i. City-run Programs. Grant Funded Measures in Exhibit A that the City will implement.
    - ii. Sonoma Water-run Programs. Grant Funded Measures in Exhibit A that Sonoma Water will implement on behalf of the City.

#### **4. CITY'S RESPONSIBILITIES**

- 4.1. *City's Specified Scope of Work:* Perform the tasks in Exhibit A (Program Scope) and Exhibit B (Schedule of Program Costs), within the dates noted in 4.4 Deadlines. In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.
- 4.2. *Match Funds:* Grant terms require City to provide match funding in the amount listed in Exhibit B. Program costs incurred between January 1, 2011, and January 17, 2014, will be applied to match only. Program costs incurred after January 17,

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2014, from partners that have fulfilled the match requirement will be 100% grant reimbursable up to maximum allowed per type of rebate.

- 4.3. *Quarterly Reports:* Provide quarterly reports of the services performed, in a format provided by Sonoma Water, (attached as Exhibit E). Reports shall be submitted to Sonoma Water on or before the first day of the months of April, July, October, and January.
- 4.4. *Deadlines:* Program costs submitted under the grant must be incurred by December 31, 2020, and submitted to Sonoma Water no later than January 31, 2021.
- 4.5. *Communication:* Provide regular communication monthly via email or phone with Sonoma Water Representative on budget tracking and other issues as required.
- 4.6. *Program Monitoring:* Provide access to work sites, records, programs, or procedures in order to ensure compliance with terms and conditions of the Grant agreement.
- 4.7. *State or Grant Funding:* City is informed and aware that this Agreement is funded by a grant from the California Department of Water Resources (State) Proposition 84 Integrated Regional Water Management Implementation Grant Agreement No. 4600011484, which grant is conditioned upon various terms that apply to City. City has reviewed the grant award documents attached hereto as Exhibit D (Grant Award Documents) and hereby agrees to comply with them to the extent they apply to a subrecipient.

### **5. SONOMA WATER'S RESPONSIBILITIES**

- 5.1. *Coordination and Grant Administration:* Sonoma Water shall coordinate, document, invoice, and report as required by the grant terms, including the Programs described in Exhibit A.
- 5.2. Sonoma Water shall submit quarterly invoices for these services to City, as applicable.
- 5.3. *Disbursement of Grant Funds:* Sonoma Water shall disburse funds per grant guidelines.

### **6. COORDINATION**

- 6.1. *Coordination:* City shall cooperate with Sonoma Water in the performance of all work hereunder. City shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

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Sonoma Water Representative	City Representative
<p>Project Manager: Kris Loomis Phone: (707) 524-1165 Email: Kris.Loomis@scwa.ca.gov</p> <p>Grant Manager: Joan Hultberg Phone: 707-547-1902 Email: joan.hultberg@scwa.ca.gov</p> <p>404 Aviation Boulevard Santa Rosa, CA 95403-9019</p>	<p>Contact: Claire Nordlie Phone: (707) 543-3962 Email: CNordlie@srcity.org</p> <p>69 Stony Circle Santa Rosa, CA 95401</p>
<p><b>Remit invoices to:</b> Accounts Payable Same address as above or Email: ap_agreements @scwa.ca.gov</p> <p><b>Remit payments to:</b> Justin Adalio Same address as above Email: Justin.adalio@scwa.ca.gov</p>	<p><b>Remit payments to:</b> Same address as above</p> <p><b>Remit invoices to:</b> Same address as above</p>

**7. PAYMENT**

- 7.1. *Program Maximum Obligations:* City’s obligation under this Agreement shall not exceed the amount listed in Exhibit B, or an amendment to that Exhibit. Sonoma Water anticipates receiving a maximum of \$475,031 in grant funding for all entities and must collect and invoice for an additional \$577,028 in non-State matching funds from Participating Agencies, for a total program cost of \$1,052,059.
- a. *Sonoma Water-run Programs:* Estimated amount for Sonoma Water-run Programs: \$0.
  - b. *City-run Programs:* Estimated amount for City-run Programs is detailed in Exhibit B.
  - c. *Estimated Amounts:* Estimated amounts in Exhibit B may be adjusted, as mutually agreed in writing by the parties using the Amended Schedule of Program Costs (Exhibit B-1), provided total grant funding costs do not exceed \$475,031 for all Participating Agencies.
  - d. *Retention.* State retains 10% of funds requested until the final grant report is approved by the State. City understands and agrees that these retained funds will be distributed when they are made available to Sonoma Water, which may be after the expiration date of this agreement.

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- 7.2. *Method of Payment:* City shall be paid in accordance with the following terms:
- a. City shall be paid in accordance with Exhibit B (Schedule of Program Costs). Labor rates for staff time will be reimbursed at the rates eligible under the grant. Expenses not expressly authorized by the Agreement shall not be reimbursed.
  - b. City shall not be entitled to any additional payment for any expenses incurred in completion of the services.
  - c. City will be reimbursed for Program expenditures when grant funds become available. Sonoma Water will distribute payments to City according to grant guidelines. (Total match funds required by State Program must be reported before grant funding is disbursed.)
  - d. Sonoma Water will collect the full non-State match obligation from all Participating Agencies before processing grant funded reimbursements for any Participating Agency. Reimbursements to Participating Agencies will be processed first for those who met their match and requested payment first. If any Participating Agency does not meet its match obligation before the end of the grant period, reimbursement amounts may be reduced for that Participating Agency.
- 7.3. *Invoices:* City shall submit its bills in arrears on a quarterly basis, based on work completed for the prior period.
- 7.4. *Quarterly Reports with Invoices:* Payment of invoices is subject to receipt of quarterly reports; format provided in Exhibit E.
- 7.5. *Excess Costs:* If the Program costs exceed the total amount described in this Agreement for City-run Programs, City shall pay for materials and services. Excess costs will be reported as additional matching funds for the grant and are not eligible for additional grant reimbursement

## 8. **TERM OF AGREEMENT**

- 8.1. The term of this Agreement shall commence on January 1, 2011 (“Effective Date”) and end on August 31, 2021, unless terminated earlier in accordance with the provisions of Article 9 (Termination).

## 9. **TERMINATION**

- 9.1. *Authority to Terminate:* Sonoma Water’s right to terminate may be exercised by Sonoma Water's General Manager.
- 9.2. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should City fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Sonoma Water may immediately terminate this Agreement by giving City written notice of such termination, stating the reason for termination.

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- 9.3. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, City shall, within 14 days following the date of termination, deliver to Sonoma Water all reports, and other data or documents, in whatever form or format, assembled or prepared by City or City's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.9 and shall submit to Sonoma Water an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 9.4. *Payment Upon Termination:* Upon termination of this Agreement by Sonoma Water, City shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by City bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then City shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate. and further provided, however, that if Sonoma Water terminates the Agreement for cause pursuant to Paragraph 9.2, Sonoma Water shall deduct from such amounts the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by City.
- 9.5. *Termination for Non-Appropriation:* Sonoma Water may terminate this Agreement at any time, upon giving City thirty (30) days written notice, for any of the following reasons:
- a. Sonoma Water has exhausted all funds legally available for payments to become due under this Agreement;
  - b. Funds which have been appropriated for purposes of this Agreement are withheld and are not made available to Sonoma Water;
- 9.6. *Change in Funding:* City understands and agrees that Sonoma Water shall have the right to terminate this Agreement immediately upon written notice to City in the event that (1) any state or federal agency or other funder reduces, withholds or terminates funding which the Sonoma Water anticipated using to pay City for services provided under this Agreement or (2) Sonoma Water has exhausted all funds legally available for payments due under this Agreement.

## **10. INDEMNIFICATION**

- 10.1. City agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency and the State of California, and to indemnify, hold harmless, and release Sonoma County Water Agency and the State of California, 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, that arise out of, pertain to, or relate to City's

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or its agents', employees', contractors', subcontractors', or performance or obligations under this Agreement. City agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency or the State of California based upon a claim relating to City's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. City's obligations under this Article 10 apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency or the State of California, but, excluding liability due to conduct of Sonoma County Water Agency or the State of California. Sonoma County Water Agency and the State of California shall have the right to select their legal counsel at City's expense, subject to City'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 City or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

### **11. INSURANCE**

11.1. With respect to performance of work under this Agreement, City shall maintain and shall require all of its subcontractors, consultants, to maintain, insurance as described in Exhibit C (Insurance Requirements).

### **12. EXTRA OR CHANGED WORK**

12.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. The parties expressly recognize that Sonoma Water personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of City to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter City shall be entitled to no compensation whatsoever for the performance of such work. City further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Sonoma Water.

12.2. *Labor Code Compliance:* City shall keep informed of and take all measures necessary to ensure compliance with applicable Labor Code requirements, including, but not limited to, §1720 et seq. of the Labor Code regarding public works, limitations on use of volunteer labor (Labor Code §1720.4), labor compliance programs (Labor Code §1771.5) and payment of prevailing wages for work done and funded pursuant to these Labor Code, including any payments to the Department of Industrial Relations under Labor Code §1771.3.

12.3. *Nondiscrimination:* During the performance of this Agreement, City and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender),

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sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. City and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. City and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, §7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

- 12.4. *Workers' Compensation:* City affirms that it is aware of the provisions of §3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and City affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- 12.5. *No Suspension or Debarment:* City warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. City also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 12.6. *Accounting, Audits, and Records Maintenance:* City shall maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by Sonoma Water and State at any and all reasonable times. All records of City or its contractors and subcontractors shall be preserved for the purpose of State audits for at least three (3) years after project completion or final billing, whichever comes later.
- 12.7. *Inspections:* Sonoma Water and State shall have the right to inspect the work being performed at any and all reasonable times, providing a minimum of 24-hour notice, during the term of this Agreement. City acknowledges that Program documents may be subject to the Public Records Act (California Government Code Section 6250 *et. seq.*). Sonoma Water and State shall have the right to inspect these documents at any and all reasonable times after completion of the Program to ensure compliance with the terms and conditions of this Agreement. During regular office hours, Sonoma Water and State shall have the right to inspect and to make copies of any books, records, or reports of the City relating



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to this Grant Agreement. City shall maintain and shall make available at all times for such inspection accurate records of its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by City to comply with this provision shall be considered a breach of this Grant Agreement, and Sonoma Water may withhold disbursements to City or take any other action it deems necessary to protect its interests.

- 12.8. *Drug-Free Workplace Certification (Certification of Compliance)*: By signing this Agreement, City, its contractors and subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code §8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355(a)(1).
  - b. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
    - i. The dangers of drug abuse in the workplace,
    - ii. City's policy of maintaining a drug-free workplace,
    - iii. Any available counseling, rehabilitation, and employee assistance programs, and
    - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
  - c. Provide, as required by Government Code section 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement:
    - i. Will receive a copy of City's drug-free policy statement, and
    - ii. Will agree to abide by terms of City's condition of employment, contract or subcontract.
- 12.9. *Ownership of Work Product*: All reports, drawings, graphics, plans, and studies, in their final form and format, assembled or prepared by City or City's subcontractors, and consultants, in connection with this Agreement, shall be the property of Sonoma Water. City shall deliver such materials to Sonoma Water upon request in their final form and format. Such materials shall be and will remain the property of Sonoma Water without restriction or limitation. Document drafts, notes, and emails of City and City's subcontractors, and consultants shall remain the property of those persons or entities.

**13. DEMAND FOR ASSURANCE**

13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits Sonoma Water's right to terminate this Agreement pursuant to Article 9 (Termination).

**14. ASSIGNMENT AND DELEGATION**

- 14.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 14.2. *Subcontracts:* Notwithstanding the foregoing, City may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 14.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, City may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 14.2. The following provisions apply to any subcontract entered into by City other than those listed in Paragraph 14.2 above:
- a. Prior to entering into any contract with subconsultant, City shall obtain Sonoma Water approval of subconsultant. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Sonoma Water and the State of California in substantially the same form as that contained in Article 10, (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.

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- 14.4. *Summary of Subconsultants' Work:* City shall provide Sonoma Water with a copy of subconsultant contract and summary of work performed by subconsultants with each invoice submitted under Paragraph 7.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

### 15. **MISCELLANEOUS PROVISIONS**

- 15.1. *No Bottled Water:* In accordance with Sonoma Water Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Sonoma Water funding shall be used to purchase single-serving, disposable water bottles for use in Sonoma Water facilities or at Sonoma Water-sponsored events. This restriction shall not apply when potable water is not available.
- 15.2. *No Waiver of Breach:* The waiver by Sonoma Water of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 15.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. City and Sonoma Water acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 15.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 15.5. *No Third-Party Beneficiaries:* Except as provided in Article 10 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 15.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.



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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.

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Reviewed as to funds:

By: \_\_\_\_\_  
Sonoma Water Division Manager -  
Administrative Services

Approved as to form:

By: \_\_\_\_\_  
Adam Brand, Deputy County Counsel

Approved as to form by City Attorney:

By: \_\_\_\_\_  
City Attorney

Insurance Documentation is on file with  
Sonoma Water

Date/TW Initials:     j|w 8/24/20    

**Sonoma County Water Agency**

**City of Santa Rosa**

By: \_\_\_\_\_  
Grant Davis, General Manager

By: \_\_\_\_\_  
Daniel Galvin III, Chair, Board of Public  
Utilities

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Board of Public Utilities Recording Secretary

## **Exhibit A**

### **Program Scope**

#### **GRANT FUNDED MEASURES: CITY RUN PROGRAMS**

- A. *Turf Replacement Rebate Program*: City will implement a turf conversion program providing incentives for converting turf to low water use plant material. The program will follow the guidelines below:
  - 1) Grant will fund rebates up to \$1.00sq. ft. for converting high water use turf. The maximum rebate will be \$5,000 for commercial participants and \$2,500 for residential participants.
- B. *High Efficiency Toilet and Urinal Rebate Program*: City will implement a high efficiency toilet and urinal rebate program to install 1.28 gallon per flush (gpf) or less for residential or commercial toilets and 0.125 gpf urinals.
  - 1) Grant will fund rebates up to \$150 for installing a qualifying high efficiency toilet or urinal.
- C. *High Efficiency Washer Rebate Program*: City will implement a high efficiency clothes washer rebate program.
  - 1) Grant will fund rebates up to \$125 for installing a qualifying high efficiency clothes washer.
- D. *Water Assessment Program*: City will implement a residential and/or commercial site water assessment program that complies with all grant requirements.
  - 1) City, or designee, will perform assessments at no cost to Participants.
  - 2) Grant will fund actual cost of assessments, which may be for indoor and/or outdoor assessments.
- E. *Deliverables*
  - 1) Quarterly reports to project manager.

**Exhibit B****Schedule of Program Costs**

<b>Grant-Funded Measure</b>	<b>Grant rebate maximum</b>	<b>Grant Funds available</b>	<b>Match Obligation</b>
Turf Replacement Rebate Program	Up to \$1.00/sq ft	\$194,600.50	\$155,000.17
High Efficiency Toilet and Urinal Rebate Program	Up to \$150 each	\$600.00	\$0
High Efficiency Washer Rebate Program	Up to \$125 each	\$21,975.00	\$51,425.00
Water Assessment Program	Actual cost	\$0	\$0
<b>Total Available Funding</b>		<b>\$217,175.50</b>	<b>\$206,425.17</b>

Note: additional funds may become available if other Participating Agencies do not use allocated amounts. Amount of funding and eligible quantities may be modified by using Exhibit B-1- Amended Schedule of Program Costs.

**Exhibit B-1**

**Amended Schedule of Program Costs for Agreement 17/18-116B**

<b>Grant-Funded Measure</b>	<b>Grant rebate maximum</b>	<b>Grant Funds available</b>	<b>Match Obligation</b>
Turf Replacement Rebate Program	Up to \$1.00/sq ft		
High Efficiency Toilet and Urinal Rebate Program	Up to \$150 each		
High Efficiency Washer Rebate Program	Up to \$125 each		
Water Assessment Program	Actual cost		
Total Available Funding		\$xxxx.xx	\$xxxx.xx

Sonoma Water and City mutually agree that amount of funding and eligible quantities listed above will replace any earlier version of Exhibit B. All conditions of the Agreement other than those specifically changed by this amended Exhibit shall remain in effect.

**City of Santa Rosa**

**Sonoma County Water Agency**

By: \_\_\_\_\_

Reviewed by:

Title: Jennifer Burke, Santa Rosa Water Director \_\_\_\_\_

By: \_\_\_\_\_  
Paul Piazza, Program Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Joan Hultberg, Grant Manager



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City of Santa Rosa copies to:  
Accounting and Records  
Peter Martin  
Claire Nordlie

Date: \_\_\_\_\_

Sonoma Water copies to:  
Accounting and Records  
Joan Hultberg  
Brad Elliott  
..... Kris Loomis  
Jennifer Willits

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## Exhibit C

### Insurance Requirements

#### 1. **INSURANCE TO BE MAINTAINED BY CITY OF SANTA ROSA**

City of Santa Rosa 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.

Sonoma Water reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Sonoma Water's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or Sonoma Water's failure to identify any insurance deficiency shall not relieve City of Santa Rosa 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 City of Santa Rosa 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 City of Santa Rosa currently has no employees as defined by the Labor Code of the State of California, City of Santa Rosa 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 City of Santa Rosa maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by City of Santa Rosa.
  - 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

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must be approved in advance by Sonoma Water. City of Santa Rosa is responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether City of Santa Rosa has a claim against the insurance or is named as a party in any action involving the Sonoma Water.

- d. Sonoma County Water Agency, the State of California, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of City of Santa Rosa's 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 Sonoma Water and City of Santa Rosa 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 City of Santa Rosa owns vehicles.
- c. Insurance shall cover hired and non-owned vehicles.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 1.4. Standards for Insurance Companies

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

### 1.5. Documentation

- a. The Certificate of Insurance must include the following reference: TW 17/18-116B.
- b. City of Santa Rosa shall submit required Evidence of Insurance prior to the execution of this Agreement. City of Santa Rosa agrees to maintain current Evidence of Insurance on file with Sonoma Water for the required period of insurance.

## Attachment 1

- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
  - d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
  - e. City of Santa Rosa 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. City of Santa Rosa's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**EXHIBIT D**  
**STANDARD CONDITIONS****D.1) ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**

- a) **Separate Accounting of Funding Disbursements and Interest Records:** Grantee shall account for the money disbursed pursuant to this Grant Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- b) **Fiscal Management Systems and Accounting Standards:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Grant Agreement.
- c) **Disposition of Money Disbursed:** All money disbursed pursuant to this Grant Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- d) **Remittance of Unexpended Funds:** Grantee shall remit to State any unexpended funds that were disbursed to Grantee under this Grant Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Grantee of funds or, within thirty (30) calendar days of the expiration of the Grant Agreement, whichever comes first.

**D.2) ACKNOWLEDGEMENT OF CREDIT:** Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Projects or using any data and/or information developed under this Grant Agreement. During construction of each project, Grantee shall install a sign at a prominent location, which shall include a statement that the project is financed under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, administered by State of California, Department of Water Resources. Grantee shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

**D.3) AIR OR WATER POLLUTION VIOLATION:** Under State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to §13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

**D.4) AMENDMENT:** This Grant Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

**D.5) AMERICANS WITH DISABILITIES ACT:** By signing this Grant Agreement, Grantee assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**D.6) APPROVAL:** This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until all required signatures have been obtained.

**D.7) AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Grant Agreement and the completion of Projects, with the costs of such audit borne by State. After completion of the Projects, State may require Grantee to conduct a final audit to State's specifications, at Grantee's expense, such audit to be conducted by and a report prepared by an independent

Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may elect to pursue any remedies provided in Paragraph 14 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code §8546.7, the Grantee shall be subject to the examination and audit by the State for a period of three years after final payment under this Grant Agreement with respect to all matters connected with this Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of Grantee or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after project completion or final billing, whichever comes later.

- D.8) BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Grant Agreement does not appropriate sufficient funds for the Proposition 84 Implementation Grant Program, this Grant Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Grant Agreement. In this event, State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Grant Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement. Nothing in this Grant Agreement shall be construed to provide Grantee with a right of priority for payment over any other Grantee. If funding for any fiscal year after the current year covered by this Grant Agreement is reduced or deleted by the Budget Act for purposes of this program, State shall have the option to either cancel this Grant Agreement with no liability occurring to State, or offer a Grant Agreement amendment to Grantee to reflect the reduced amount.
- D.9) CALIFORNIA CONSERVATION CORPS:** As required in Water Code §79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Exhibit A, Work Plan, and shall use the services of one of these organizations whenever feasible.
- D.10) CEQA:** Activities funded under this Grant Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.). Information on CEQA may be found at the following links:  
Environmental Information: <http://resources.ca.gov/ceqa/>  
California State Clearinghouse Handbook:  
[https://www.opr.ca.gov/docs/SCH\\_Handbook\\_2012.pdf](https://www.opr.ca.gov/docs/SCH_Handbook_2012.pdf)
- D.11) CHILD SUPPORT COMPLIANCE ACT:** For any Grant Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code §7110, that:
- a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with §5200) of Part 5 of Division 9 of the Family Code; and
  - b) The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D.12) CLAIMS DISPUTE:** Any claim that the Grantee may have regarding performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the State's Project Manager, within thirty (30) calendar days of the Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
- D.13) COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Grant Agreement.

- D.14) COMPUTER SOFTWARE:** Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Grant Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- D.15) CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code, § 1090 and Public Contract Code, § 10410 and § 10411, for State conflict of interest requirements.
- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
  - c) **Employees of the Grantee:** Employees of the Grantee shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Government Code § 87100 *et seq.*
  - d) **Employees and Consultants to the Grantee:** Individuals working on behalf of a Grantee may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
- D.16) DELIVERY OF INFORMATION, REPORTS, AND DATA:** Grantee agrees to expeditiously provide throughout the term of this Grant Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.17) DISPOSITION OF EQUIPMENT:** Grantee shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Grantee with a list of the items on the inventory that State will take title to. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D.18) DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Grant Agreement, Grantee, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code § 8355(a)(1).

- b) Establish a Drug-Free Awareness Program, as required by Government Code §8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
  - i) The dangers of drug abuse in the workplace,
  - ii) Grantee's policy of maintaining a drug-free workplace,
  - iii) Any available counseling, rehabilitation, and employee assistance programs, and
  - iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide, as required by Government Code §8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Grant Agreement:
  - i) Will receive a copy of Grantee's drug-free policy statement, and
  - ii) Will agree to abide by terms of Grantee's condition of employment, contract or subcontract.

- D.19) FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL:** Upon completion of the Project, Grantee shall provide for a final inspection and certification by the appropriate registered professional (California Registered Civil Engineer or Geologist) that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Grant Agreement. Grantee shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.
- D.20) GRANTEE COMMITMENTS:** Grantee accepts and agrees to comply with all terms, provisions, conditions and commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the Grantee in the application, documents, amendments, and communications filed in support of its request for funding.
- D.21) GRANTEE NAME CHANGE:** Approval of the State's Program Manager is required to change the Grantee's name as listed on this Grant Agreement. Upon receipt of legal documentation of the name change the State will process an amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- D.22) GOVERNING LAW:** This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.23) INDEMNIFICATION:** Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Projects and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Grantee shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insured on their liability insurance for activities undertaken pursuant to this Agreement.
- D.24) INDEPENDENT CAPACITY:** Grantee, and the agents and employees of Grantees, in the performance of the Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D.25) INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Grant Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Grant Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.
- D.26) INSPECTIONS OF PROJECT BY STATE:** State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Grant Agreement. This right shall extend to any subcontracts, and Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Grant Agreement with State.



- D.27) INVOICE DISPUTES:** In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. Any claim that Grantee may have regarding the performance of this Grant Agreement including, but not limited to claims for additional compensation or extension of time, shall be submitted to the DWR Project Manager within thirty (30) calendar days of Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Grant Agreement to implement the terms of any such resolution.
- D.28) LABOR CODE COMPLIANCE:** The Grantee will be required to keep informed of and take all measures necessary to ensure compliance with applicable Labor Code requirements, including, but not limited to, § 1720 *et seq.* of the Labor Code regarding public works, limitations on use of volunteer labor (Labor Code § 1720.4), labor compliance programs (Labor Code § 1771.5) and payment of prevailing wages for work done and funded pursuant to these Guidelines, including any payments to the Department of Industrial Relations under Labor Code § 1771.3.
- D.29) NONDISCRIMINATION:** During the performance of this Grant Agreement, Grantee and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Grantee and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and its contractors or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code § 12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, § 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Grant Agreement.
- D.30) NO DISCRIMINATION AGAINST DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the Grantee certifies by signing this Grant Agreement, under penalty of perjury under the laws of State of California that Grantee is in compliance with Public Contract Code § 10295.3.
- D.31) OPINIONS AND DETERMINATIONS:** Where the terms of this Grant Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- D.32) PERFORMANCE AND ASSURANCES:** Grantee agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in Exhibit A (Work Plan) and to apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law.
- D.33) PRIORITY HIRING CONSIDERATIONS:** If this Grant Agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the Grant Agreement to qualified recipients of aid under Welfare and Institutions Code § 11200 in accordance with Public Contract Code § 10353.
- D.34) PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the

Projects, or with Grantee's service of water, without prior permission of State. Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Grantee to meet its obligations under this Grant Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.

- D.35) REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this Grant Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- D.36) RETENTION:** Notwithstanding any other provision of this Grant Agreement, State shall, for each project, withhold five percent (5.0%) until January 1, 2018 and ten percent (10.0%), thereafter, of the funds requested by Grantee for reimbursement of Eligible Costs. Each project in this Grant Agreement will be eligible to release its respective retention when that project is completed and Grantee has met requirements of Paragraph 19, "Submissions of Reports", except in the case of the last project to be completed under this Grant Agreement, in which case retention for such project will not be disbursed until the "Grant Completion Report" is submitted to and approved by State. State shall disburse retained funds to the Grantee.
- D.37) RIGHTS IN DATA:** Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Grant Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act., Government Code §6250 *et seq.* Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Grant Agreement, subject to appropriate acknowledgement of credit to State for financial support. Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- D.38) SEVERABILITY:** Should any portion of this Grant Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Grant Agreement shall continue as modified.
- D.39) STATE REVIEWS:** The parties agree that review or approval of projects applications, documents, permits, plans, and specifications or other project information by the State is for administrative purposes only and does not relieve the Grantee of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the projects.
- D.40) SUSPENSION OF PAYMENTS:** This Grant Agreement may be subject to suspension of payments or termination, or both, and Grantee may be subject to debarment if the State determines that:
- a) Grantee, its contractors, or subcontractors have made a false certification, or
  - b) Grantee, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Grant Agreement.
- D.41) SUCCESSORS AND ASSIGNS:** This Grant Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Grant Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D.42) TERMINATION BY GRANTEE:** Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date.
- D.43) TERMINATION FOR CAUSE:** Subject to the right to cure under Paragraph 14, the State may terminate this Grant Agreement and be relieved of any payments should Grantee fail to perform the requirements of this Grant Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 14.

- D.44) TERMINATION WITHOUT CAUSE:** The State may terminate this Grant Agreement without cause on 30 calendar days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.45) THIRD PARTY BENEFICIARIES:** The parties to this Grant Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.46) TIMELINESS:** Time is of the essence in this Grant Agreement.
- D.47) TRAVEL:** Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Agreement. Travel and per diem expenses to be reimbursed under this Agreement shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations and shall be reimbursed consistent with the rates current at the time of travel. These rates are published at: <http://www.calhr.ca.gov/employees/Pages/travel-meals.aspx>, or its successor website. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State's Project Manager.
- D.48) WAIVER OF RIGHTS:** None of the provisions of this Grant Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Grant Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Grant Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
- D.49) WORKERS' COMPENSATION:** Grantee affirms that it is aware of the provisions of §3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Grant Agreement and will make its contractors and subcontractors aware of this provision.







