

Agreement By and Between Sonoma County Water Agency and the City of Santa Rosa for Nutrient Offset Credits (Phosphorous)

This agreement (“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 municipal corporation (“City”) (together, the “Parties”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement.

RECITALS

- A. The North Coast Regional Water Quality Control Board (Regional Water Board) approved the Nutrient Offset Program in 2008 through its Resolution No. R1-2008-0061 (Exhibit A).
- B. The Nutrient Offset Program gives the City of Santa Rosa the option to offset the discharge of phosphorus contained in its treated wastewater effluent lawfully discharged during the winter season by conducting work that either prevents or removes equal or greater amounts of phosphorus from unregulated sources of discharge elsewhere in the Laguna de Santa Rosa watershed.
- C. The Regional Water Board subsequently adopted its Water Quality Trading Framework for the Laguna de Santa Rosa (WQTF) on July 11, 2018 by Resolution No. R1-2018-0025 (Exhibit B), which provides for a system of tradable phosphorous credits that can be used as offsets.
- D. At the City’s request, Sonoma Water has submitted a Nutrient Offset Project Proposal (Exhibits C & D) (Proposal) to the Regional Water Board, for the purpose of obtaining Regional Water Board approval for nutrient offset credits for Phosphorous (“P Credits”) from Sonoma Water’s Streambed Maintenance Program operations. The Proposal is within the scope of Sonoma Water’s existing CEQA entitlements for the Streambed Maintenance Program and requires no further regulatory entitlements.
- E. The Proposal has been reviewed by the Regional Water Board under the Nutrient Offset Program.
- F. The P Credits must be verified by an independent third party before they are released for use by the Regional Water Board. City intends to apply these P Credits toward its compliance with permitting requirements on annual discharges from the Subregional Facility to the Laguna de Santa Rosa [Order No. R1-2013-0001].
- G. After third-party verification, and after release of the credits for by the North Coast Regional Water Quality Control Board, Sonoma Water intends to sell, and City intends to purchase, up to 20,000 pounds of P Credits at a cost of \$50 per pound for a total amount of not to exceed one million dollars (\$1,000,000).

In consideration of the foregoing recitals and the mutual covenants contained herein, the Parties 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: North Coast Regional Water Quality Control Board, Nutrient Offset Program, Resolution No. R1-2008-0061
- b. Exhibit B: North Coast Regional Water Quality Control Board, Water Quality Trading Framework for the Laguna de Santa Rosa (WQTF), Resolution No. R1-2018-0025.
- c. Exhibit C: Sonoma Water, Nutrient Offset Project Proposal, Laguna de Santa Rosa Reaches 1 and 2
- d. Exhibit D: Sonoma Water, Memorandum, “Revised total and annual phosphorus reduction and credit calculation”

3. CREDIT TRANSFER

- 3.1. *Notice of Approval:* City and Sonoma Water’s obligations under this agreement are contingent on the Executive Officer’s issuance of approval of the Proposal for P Credits (“Notice of Approval”).
- 3.2. After the North Coast Regional Water Quality Control Board Executive Officer issues the Notice of Approval for the P Credits, Sonoma Water agrees to undertake the Proposal. Sonoma Water agrees to provide City with the truck load count per location of any materials removed and other data necessary to verify the amount of Phosphorous removal.
- 3.3. *Third-Party Certification:* Upon Sonoma Water’s completion of the Proposal, City agrees to obtain a third-party verification of the credits, at City’s expense, pursuant to Regional Water Board requirements. City agrees to promptly transmit this verification to the North Coast Regional Water Quality Control Board and Sonoma Water.
- 3.4. *Payment terms:* Upon certification and release of the P Credits by the Regional Water Board, the City agrees to pay Sonoma Water \$50 per pound of P Credit, up to a maximum of 20,000 pounds at a cost of \$1,000,000.
- 3.5. *Nature of P Credits:* P Credits exist pursuant to the North Coast Regional Water Quality Control Board’s adopted policies and programs. P Credits are not an interest in real property nor a professional service. The life, utility, transferability, and validity of P Credits shall be governed by the Notice of

Approval and any applicable Regional Water Board polices, not by this Agreement. Sonoma Water agrees to undertake the Proposal as necessary to obtain verification and release of the P Credits by the Regional Water Board, but makes this P Credit sale as is, and makes no warranty that any certified P Credits may be used for any purpose. Notwithstanding the foregoing, City shall have no obligation to pay for any P Credits until such time as they are verified for release by the Regional Water Board.

4. PAYMENT

- 4.1. *Total Costs:* Total costs under this Agreement shall not exceed \$1,000,000.
- 4.2. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within 60 days upon Sonoma Water's presentation of an invoice to City, following verification and release of the P Credits by the Regional Water Board.

5. INDEMNIFICATION

- 5.1. City agrees to indemnify, hold harmless, and release Sonoma Water, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including City, that arise out of, pertain to, or relate to City's reliance upon P Credits for regulatory compliance.
- 5.2. Sonoma Water agrees to indemnify, hold harmless, and release the City of Santa Rosa, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Sonoma Water, (1) that arise out of Sonoma County Water Agency's physical work to implement the Proposal, and (2) that are not within the scope of Paragraph 5.1 of this Agreement.

6. ASSIGNMENT AND DELEGATION

- 6.1. *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. Nothing in this provision shall limit City's ability to transfer P Credits, to the extent it is permitted to do so by the Regional Water Board.

7. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

- 7.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified below.

Sonoma Water	City of Santa Rosa
Michael Thompson Sonoma Water 404 Aviation Boulevard Santa Rosa, CA 95403	Sean McNeil Deputy Director of Environmental Compliance 69 Stony Circle Santa Rosa, CA 95401

8. MISCELLANEOUS PROVISIONS

- 8.1. *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.
- 8.2. *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.
- 8.3. *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.
- 8.4. *No Third-Party Beneficiaries:* Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 8.5. *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.

- 8.6. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 8.7. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 8.8. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 8.9. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Approved as to form:

Approved as to form:

By: _____
Verne Ball, Deputy County Counsel

By: _____
Santa Rosa City Attorney's Office

Sonoma County Water Agency

City of Santa Rosa,
a California municipal corporation

By: _____
Grant Davis
General Manager

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____