

Reimbursement Agreement for the Town of Windsor Water Conservation Program

This agreement ("Agreement") is between the **Sonoma County Water Agency**, a body corporate and politic of the State of California (hereinafter "Sonoma Water"), and **Town of Windsor**, a municipal corporation (hereinafter "Town").

RECITALS

- A. Town and Sonoma Water share the goal of promoting increased water use efficiency in order to reduce operating costs, avoid or defer capital improvement costs associated with expansion of water supply and wastewater disposal systems, minimize associated environmental impacts, and meet the criteria and standards of state and federal regulatory agencies.
- B. The Restructured Agreement for Water Supply ("Restructured Agreement") authorizes Sonoma Water to implement and fund water conservation measures that are cost-effective and will reduce water demands on Sonoma Water's water transmission system.
- C. The Restructured Agreement provides that the Water Conservation Sub-charge collected from Town shall be placed in a separate account and made available to Town for Water Conservation Projects.
- D. The Sonoma- Marin Saving Water Partnership (Partnership) was established on December 14, 2010, through signature of a Memorandum of Understanding (MOU). The MOU allows for members of the Partnership to participate in Regional Programs offered through Sonoma Water.
- E. Sonoma Water and Town have cooperated to develop, implement, and fund a water use efficiency program ("Program") and Town desires Sonoma Water's continued assistance in developing and implementing Town's water use efficiency measures as described in Exhibit A, which is an integral part of this Agreement.
- F. Town is requesting services and materials from Sonoma Water for implementation and administration of Town's Program, and will reimburse Sonoma Water for its costs.
- G. Sonoma Water and Town do mutually desire to cooperate in the implementation of Town's Program.

AGREEMENT

Town and Sonoma Water agree as follows:

1. RECITALS

- A. The above recitals are true and correct.

2. DEFINITIONS

- A. For the purposes of this Agreement the following terms and definitions shall be used:
- 1) Measures: Components of the Program are identified in Exhibit A.
 - 2) Participants: Town-approved water customers who apply to participate in individual Measures as described in Exhibit A.
 - 3) Program: Collectively, the water use efficiency Measures described in Exhibit A, and related activities Sonoma Water has agreed to perform, which are funded by Town Water Conservation Sub-charges under this Agreement.
 - 4) Regional Program Measures: Water use efficiency Measures described in Exhibit A that are implemented by Sonoma Water on behalf of multiple retail water contractors.
 - 5) Town-run Programs: Water conservation Measures described in Exhibit A and implemented by the Town that may be reimbursed by Sonoma Water under this Agreement.

3. COORDINATION

- A. Town shall coordinate work with Sonoma Water's Representative. Contact information:

Sonoma Water	Town
Sonoma Water Representative: Kris Loomis or assigned personnel	Town Representative: Paul Piazza, Environmental Program Manager, or assigned personnel
404 Aviation Boulevard	9291 Old Redwood Highway, PO Box 100
Santa Rosa, California, 95403-9019	Windsor, California, 95492
Phone: 707-524-1165	Phone: 707-838-5357
Email: Kris.Loomis@scwa.ca.gov	Email: ppiazza@townofwindsor.com
Remit invoices to:	Remit payments to:
Accounts Payable	Same address as above
Same address as above or	Attn: Accounts Receivable
Email: ap_agreements@scwa.ca.gov	

4. TOWN'S RESPONSIBILITIES

Assist Sonoma Water with administration of Program as follows:

- A. Direction: Provide Sonoma Water Representative with requested policy and/or direction during Program.
- B. Record Keeping: Maintain complete and accurate records of all transactions in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records shall be available to Sonoma Water at all reasonable times for inspection and analysis.
- C. Quarterly Status Reports with invoices: Provide a quarterly status report of Town-Run Measures to Sonoma Water Representative, including work in progress and complete cost accounting by measure. Reports shall be submitted with quarterly invoices.

5. SONOMA WATER'S RESPONSIBILITIES

- A. Coordination: Coordinate, document, and report on the Measures that Sonoma Water performs, including management, administration, budget, and follow-up of Measures described in Exhibit A, and provide staff to respond to incoming conservation calls from Town customers as needed.
- B. Collateral Materials: Design and produce Program brochures and applications, as applicable and approved by Town.
- C. Regional Programs: Administer Regional Program Measures as described in Exhibit A.
- D. Quarterly Reports: Prepare quarterly reports summarizing status of Measures completed by Sonoma Water and submit the report to Town. Cost accounting of Sonoma Water-provided materials and services shall be included in this report.
- E. Record Keeping: Sonoma Water will maintain complete and accurate records of all Sonoma Water costs and transactions associated with performance of Sonoma Water's responsibilities under this Agreement in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records will be available to Town at all reasonable times for inspection and analysis.
- F. Statutory Compliance/Living Wage Ordinance: Sonoma Water agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Sonoma Water expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

6. FUNDING

- A. Agreement total: A total of \$300,000 is available to Town from the Water Conservation Sub-fund for Regional Program Measures and Town-run Programs.
- B. Payments by Sonoma Water: Town shall invoice Sonoma Water quarterly for reimbursement of expenses incurred by Town for the water conservation portion of the Town-run Program. Invoices submitted to Sonoma Water by Town shall include a complete cost accounting by Measure and be clearly marked with "Town of Windsor, Funding of Water Conservation Measures, Project Activity Code No. T0363D034." Upon receipt, review, and approval of invoice and Quarterly Status Report, Sonoma Water will reimburse Town for Town-run Program costs as authorized herein and itemized in said invoice(s).

7. INSURANCE

Sonoma Water shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection

with the performance of the work hereunder by Sonoma Water, Sonoma Water's agents, representatives, and employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.
3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, Sonoma Water shall sign a declaration as described in California Health and Safety Code Section 19825.
4. Reserved

B. Minimum Limits of Insurance. Sonoma Water shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: statutory limit; Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Reserved

C. Umbrella or Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Town before the Town's insurance or self-insurance shall be called upon to protect it as a named insured.

D. Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the Town and shall not reduce the limits of liability. Policies containing any self-insured retention provision shall provide or be endorsed to provide that the self-insured retention may be satisfied by either the named Insured or the Town. At the option of the Town, either: the insurer shall reduce or eliminate such

deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers, or Sonoma Water shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses. The Town reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to so exercise later.

E. Other Insurance Provisions.

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
 - a. The Town, its officers, officials, employees and volunteers (the "Additional Insureds") are to be covered as insureds as respects: liability arising out of work or operations as performed by or on behalf of Sonoma Water; or automobiles owned, leased, hired or borrowed by Sonoma Water.
 - b. For any claims related to this project, Sonoma Water's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of Sonoma Water's insurance and shall not contribute with it. The Additional Insured coverage under Sonoma Water's policy shall be at least as broad as ISO Form CG 20 01 04 13.
 - c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either Party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.
2. The Workers' Compensation endorsement shall contain a Waiver of Subrogation against the Town. Sonoma Water shall provide to the Town an endorsement from the Workers' Compensation insurer, if any, agreeing to waive all rights of subrogation against the Town for injuries to employees of the Insured resulting from work for the Town or use of the Town's premises or facilities.
3. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits included above shall be available to the Town. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

- G. Verification of Coverage. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- H. Subcontractors. Sonoma Water shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor prior to commencement of subcontractor's work. Sonoma Water agrees to include with all subcontractors in their subcontract the same requirements stated herein including the indemnity and insurance requirements. Subcontractors hired by Sonoma Water agree to be bound to Sonoma Water and the Town in the same manner and to the same extent as Sonoma Water is bound to Town under this Agreement. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of these indemnity and insurance provisions shall be furnished by Sonoma Water to any subcontractor. Sonoma Water shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Sonoma Water shall maintain proof of compliance.

8. MUTUAL INDEMNIFICATION

- A. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefit acts, or other employee benefit acts.

9. TERM OF AGREEMENT

- A. This Agreement shall remain in effect until depletion of the not-to-exceed amount listed in Paragraph 6, or until December 31, 2021, whichever occurs first, unless terminated earlier in accordance with the provisions of Paragraph 10.

10. TERMINATION OF AGREEMENT

- A. This Agreement may be terminated by either party for any reason upon thirty calendar days' written notice by either party. Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.

11. ADDITIONAL REQUIREMENTS

- A. Authority to Amend Agreement: Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The

parties expressly recognize that Sonoma Water personnel are without authorization to order extra or changed work or waive Agreement requirements. Notwithstanding this authority, neither Sonoma Water nor Town is under any obligation to approve such amendments.

- B. No Waiver of Breach: The waiver of either party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- C. 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.

Town 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. Town and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- D. 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.
- E. Applicable Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
- F. 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.
- G. Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- H. 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.
- I. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

TW 19/20-008

Reviewed as to funds:

By: _____
Sonoma County Water Agency
Division Manager - Administrative Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Approved as to form:

By: _____
Jose Sanchez, Town Attorney

Sonoma County Water Agency

Town of Windsor

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
_____ [date]

By: _____
Ken MacNab
Town Manager

Date: _____

Date: _____

EXHIBIT A

Water Use Efficiency Program Summary

Regional Measures

1. Regional Water Smart Home

Project-Activity Code: T0363

Town may participate in and Sonoma Water will coordinate the Partnership's Regional Water Smart Home Program. Sonoma Water will perform a site evaluation of indoor and outdoor water-using fixtures and then prepare a report with a list of water savings recommendations as requested by Town. Sonoma Water will provide Participant and Town with copies of the Participant reports. As directed by the Town, Sonoma Water will assist in program management including, but not limited to, revising program materials and developing marketing material.

2. Regional Large Landscape Water Use Survey

Project-Activity Code: T0363

Town may participate in and Sonoma Water will coordinate the Partnership's Regional Large Landscape Water Use Survey Program. Sonoma Water will offer and perform Large Landscape Water Use Surveys as requested by Town. The Large Landscape Water Use Survey includes measurement of landscape area, measurement of total irrigable area, irrigation systems check, distribution uniformity analysis, development of irrigation schedules, and Participant survey report. Sonoma Water will provide Town with copies of Participant Reports. As directed by the Town, Sonoma Water will assist in program management including, but not limited to, revising program materials and developing marketing material.

3. Regional Commercial, Industrial, and Institutional Water Use Survey

Project-Activity Code: T0363

Town may participate in and Sonoma Water will coordinate the Partnership's Regional Commercial, Industrial, and Institutional (CII) Water Use Survey Program. Sonoma Water will offer and perform CII Water Use Surveys as requested by Town.

The CII Water Use Survey includes a site visit, evaluation of all water-using fixtures, and a water survey report identifying recommended efficiency measures, payback period, and incentives programs available to the Participant. Sonoma Water will provide Town and Participant with copies of the CII Water Survey reports. As directed by the Town, Sonoma Water will assist in program management including, but not limited to, revising program materials and developing marketing material.

4. Regional Smart Controller Program
Project-Activity Code: T0363

Town may participate in and Sonoma Water will coordinate the Partnership's Regional Smart Controller Program. Sonoma Water will offer the Smart Controller Program as requested by Town, which may include delivery or installation of a smart controller at single-family residences, customer assistance, marketing materials, evaluation metrics, and customer participation data. The Regional Smart Controller Program may include additional or optional elements such as the retrofit high-efficiency rotating nozzles and an irrigation system audit.