

AGREEMENT BY AND BETWEEN SONOMA COUNTY WATER AGENCY AND THE TOWN OF
WINDSOR FOR NUTRIENT OFFSET CREDITS (PHOSPHORUS)

This agreement (“Agreement”) is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California (“Sonoma Water”) and **Town of Windsor/Windsor Water District** (“Town”), 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) adopted the Water Quality Trading Framework for the Laguna de Santa Rosa (WQTF) in the Town of Windsor’s NPDES Permit on December 7, 2021, by Resolution No. R1-2021-0042 (Exhibit A), which provides for a system of tradable phosphorus credits that can be used as offsets.
- B. The WQTF gives the City of Santa Rosa and the Town of Windsor 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. At the Town’s request, Sonoma Water has submitted a Nutrient Offset Project Proposal (Proposal) (Exhibit B) to the Regional Water Board, for the purpose of obtaining Regional Water Board approval for water quality trading credits for Phosphorus (“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.
- D. The Proposal underwent a 30-day public comment period from August 1 to August 31, 2023. Regional Water Board Staff received no public comment letters during that time. Following review of the Project Proposal, Regional Water Board Staff determined the project consistent with the requirements of the WQTF.
- E. On September 6, 2023, the Regional Water Board’s Executive Officer formally approved Colgan Creek Reaches 1 and 2 Water Quality Trading Proposal as eligible for water quality credits, and made findings that the project met the eligibility criteria of the WQTF that is included in the in the Town of Windsor’s NPDES Permit on December 7, 2021, by Resolution No. R1-2021-0042 .
- F. On November 27, 2023, an independent third party, the Sonoma Resource Conservation District, verified the amount of phosphorus credits generated by the project implemented by Sonoma Water in September 2023.
- G. On April 9, 2024, the Regional Water Board confirmed the validity of the credits transferred pursuant to this Agreement (Exhibit C).
- H. The Town intends to apply these P Credits toward its compliance with permitting requirements on discharges from the Windsor Water Reclamation Facility to the Laguna de Santa Rosa (Order No. R1-2021-0042).

- I. Through this Agreement, Sonoma Water intends to sell, and Town intends to purchase, 4,000 pounds of P Credits at a cost of \$60.00 per pound, for a total cost of two hundred and forty thousand dollars (\$240,000.00).

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

AGREEMENT

1. RECITALS AND TERM

- 1.1. The above recitals are true and correct and incorporated herein.
- 1.2. This Agreement shall commence on the Effective Date and shall continue in effect for the duration and use of the credits transferred hereunder.

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, Water Quality Trading Framework for the Laguna de Santa Rosa (WQTF), Resolution No. R1-2021-0042.
 - b. Exhibit B: Sonoma Water, Water Quality Trading Project Proposal (Proposal).
 - c. Exhibit C: North Coast Regional Water Quality Control Board “Colgan Creek Reaches 1 and 2, Water Quality Credit Generating Project, Credit Certification Letter”.

3. CREDIT TRANSFERS

- 3.1. *Payment Terms:* The Town agrees to pay Sonoma Water \$60.00 per pound of P Credit, for 4,000 pounds of P Credit, at a cost of \$240,000.00.
- 3.2. *Nature of P Credits:* P Credits exist pursuant to the WQTF and 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 WQTF, not by this Agreement.

4. PAYMENT

- 4.1. *Total Costs:* The Town shall pay Sonoma Water \$240,000.00.
- 1.1. *Timing of Payments:* Payment shall be made within sixty (60) days of the Effective Date of this Agreement to Sonoma Water by check sent to the following address:

Sonoma County Water Agency
ATTN: Accounts Receivable
404 Aviation Boulevard
Santa Rosa, CA 95403

5. INDEMNIFICATION

- 5.1. Town agrees to indemnify, hold harmless, and release Sonoma Water, its officers, agents, and employees, from and against any actions, claims, damage, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including the Town, that arise out of, pertain to, or relate to the Town's breach of this Agreement or negligence in handling the P Credits.
- 5.2. Sonoma Water agrees to indemnify, hold harmless, and release the Town of Windsor, 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 duties as the credit seller under the WQTF, including any 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 the Town's ability to transfer P Credits, to the extent it is permitted to do so under the WQTF or by the Regional Water Board.

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

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

Sonoma Water	Town of Windsor
General Manager Sonoma Water 404 Aviation Boulevard Santa Rosa, CA 95403	Veronica Siwy Town of Windsor PO Box 100 Windsor, CA 95492

8. MEDIATION

- 8.1. If a dispute arises out of or relates to this Agreement, or an alleged breach of it, and if the dispute cannot be settled through negotiation, Town and Sonoma Water agree to try in

good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, with the following exceptions to those Rules:

- a. The mediation shall be conducted at Santa Rosa, California.
 - b. Unless otherwise agreed in writing by all parties participating in the mediation, the mediation shall be concluded no later than ninety (90) days after initiation of the mediation.
 - c. Not later than thirty (30) calendar days after initiation of mediation, the parties shall exchange all relevant non-privileged documents.
- 8.2. Any mediation proceeding shall be confidential and shall not be admissible in a subsequent proceeding. If any party commences a court action based on a dispute or claim to which this section applies without first attempting to resolve the matter through mediation, then the other party may apply to such judge for an order staying the court action pending mediation.

9. MISCELLANEOUS LIABILITIES

- 9.1. *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.
- 9.2. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in the 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, the 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. The 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.
- 9.3. *Consent:* Wherever in this Agreement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 9.4. *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.
- 9.5. *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.
- 9.6. *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.

- 9.7. *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.
- 9.8. *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.
- 9.9. *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.

Reviewed as to substance by Sonoma Water:

Reviewed as to substance by the Town of Windsor:

General Manager

Public Works Director

Reviewed as to form by Sonoma Water Counsel:

Reviewed as to form by Town Attorney:

Sonoma Water Counsel

Town Attorney

Attest:

Attest:

Attest

Town Clerk

TOWN OF WINDSOR

By: _____

Town Manager

Date: _____