

DRAFT First Amended and Restated Agreement for Funding of Wastewater Intertie Pipeline Construction between Airport/Larkfield/Wikiup Sanitation Zone and Town of Windsor

This first amended and restated agreement (“First Amended and Restated Agreement” or “Agreement”) is by and between **Sonoma County Water Agency** (“Sonoma Water”) and **Town of Windsor** (“Town”).

RECITALS

- A. The Wastewater Intertie Pipeline Project is described in Exhibit A and is hereinafter referred to as “Project.” Exhibit B provides a location map of the Project.
- B. Sonoma County Water Agency owns, operates, and manages Airport/Larkfield/Wikiup Sanitation Zone (“Zone”).
- C. Town requested \$1,500,000 from Sonoma County Water Agency's Zone fund for the construction of the Project during the 2024 construction season.
- D. Town owns or has acquired, and is willing to retain ownership of, any property or easements wherein said Project will be constructed and is willing to operate and maintain said Project in perpetuity.
- E. Sonoma Water and Town do mutually desire to cooperate in the construction and financing of said Project.
- F. Town wishes to expedite construction of said Project.
- G. Town has prepared all appropriate environmental documents for the Project under the California Environmental Quality Act (CEQA). The Town Council determined that the Project was exempt from further review pursuant to Public Resources Code section 21080.21, which exempts from CEQA review the installation of new pipeline of less than one mile within a public street or any other public right-of-way.
- H. Sonoma Water and Town first entered into this Agreement on June 12, 2024, in the amount of \$1,500,000.
- I. This First Amended and Restated Agreement increases the amount by \$1,300,000 under Paragraph 6.2 as modified by this First Amended Agreement. As a result of the awarded contract, and the occurrence of several change orders, cost was higher than the engineer’s estimate. This First Amended and Restated Agreement is for a new not-to-exceed Agreement total of \$2,800,000 with no change to the term end date of June 30, 2026.
- J. This First Amended and Restated 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

Town and Sonoma Water agree as follows:

1. RECITALS

- 1.1. The above recitals are true and correct and are incorporated herein.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
- a. Exhibit A: Project Description.
 - b. Exhibit B: Location Map.
 - c. Exhibit C: Insurance Requirements.

3. COORDINATION

- 3.1. Town shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

Sonoma Water	Town
Project Manager: Kevin Booker 404 Aviation Boulevard Santa Rosa, California 95403-9019 Phone: 707-521-1865 Email: Kevin.Booker@scwa.ca.gov	Contact: Veronica Siwy 9291 Old Redwood Highway Windsor, California 95492 Phone: 707-838-1218 Email: vsowy@townofwindsor.com
Remit invoices to:	Remit payments to:
Anika McLea Same address as above	Accounts Payable Same address as above

4. TOWN'S RESPONSIBILITIES

Town shall complete the following at its cost and expense, except to the extent of Sonoma Water funding provided for in Articles 5 and 5.4 below.

- 4.1. General: Town agrees to perform all work in accordance with the requirements of applicable federal, state, and local laws.
- 4.2. Environmental Documentation: Town shall be the Lead Agency for the Project under the requirements of the California Environmental Quality Act (CEQA) and shall prepare all appropriate environmental documents. Town shall provide a copy of the draft environmental document to Sonoma Water during public review process and a final copy within 30 calendar days of approval of the document.

- 4.3. Permits: Town shall obtain any permits that may be necessary from utilities or regulatory agencies for construction of the Project.
- 4.4. Rights-of-Way: Town shall act as Sonoma Water's agent for acquiring any and all property rights as necessary for construction of the Project.
- 4.5. Design and Surveying: Town shall design the Project including all design surveying and construction staking.
- 4.6. Draft Plans and Specifications: Town shall prepare a draft of the Project plans and specifications and shall submit one set to Sonoma Water for review and comment. Sonoma Water shall provide its comments to Town within fifteen (15) days of receipt of Plan. Town shall carefully consider all comments from Sonoma Water, but Town shall have the sole discretion to determine what changes, if any, are appropriate for the Project plans.
- 4.7. Final Plans and Specifications: Town shall prepare and provide Sonoma Water with a final complete set of all Project construction documents. Such documents shall be prepared by and signed and stamped by, or under the responsible charge of, appropriately registered professionals.
- 4.8. Insurance Requirements and Indemnification Obligations:
- a. Insurance Requirements: Town shall maintain and shall require all of its contractors, consultants, and other agents to, at a minimum, maintain insurance as described in Exhibit C (Insurance Requirements). Evidence of insurance shall be submitted as specified in Exhibit C.
 - b. Indemnification Obligation of Town's Consultants and Contractors:
 - i. Town shall include the following language in its consultant and contractor agreements:
 - a) Consultant/contractor agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, and to indemnify, hold harmless, and release Sonoma County Water Agency, 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 consultant/contractor, that arise out of, pertain to, or relate to consultant's/contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant/contractor agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency, based upon a claim relating to consultant's/contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's/contractor's obligations under this Paragraph apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, but, to the

extent required by law, excluding liability due to conduct of Sonoma County Water Agency. Sonoma County Water Agency shall have the right to select its legal counsel at consultant's/contractor's expense, subject to consultant's/contractor'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 consultant/contractor or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts. This indemnity provision survives the Agreement.

ii. This Section shall not limit Town's ability to require Consultants and Contractors to indemnify Town.

c. Documentation: Town shall provide evidence of such insurance and indemnification to Sonoma Water in a form satisfactory to Sonoma Water.

4.9. Bidding: Town shall let Project to bid.

4.10. Award: Town shall award a construction contract to the lowest responsive and responsible bidder, in accordance with the requirements of the Public Contract Code, unless the Town Council elects to reject all bids. Such award was made before July 30, 2024. If the Town Council elects not to award a construction contract, Town and Sonoma Water shall meet in good faith to discuss options and a schedule for rebidding the Project.

4.11. Construction: Town shall construct the Project in accordance with the Final Plans and Specifications.

4.12. Contract Administration: Town shall manage and administer the contract for construction of the Project.

4.13. Prevailing Wages: Town understands that use of Sonoma Water funds for any "public work," as defined by Labor Code sections 1720 *et seq.*, triggers prevailing wage compliance obligations under the California Labor Code, and that the Project contemplated hereunder qualifies as a "public work" for this purpose. Town agrees to comply with all obligations of an "awarding body" as defined by Labor Code section 1722 with respect to any public works contract it may enter into pursuant to this Agreement. Without limiting the generality of the foregoing, Town agrees to (1) confirm that all contractors and subcontractors engaged to work on the Project are registered and qualified pursuant to Labor Code section 1725.5; (2) ensure that the construct contract requires all such contractors and subcontractors to pay prevailing wages to all workers on the Project in accordance with the California Labor Code and applicable DIR regulations; (3) ensure that the construct contract requires all such contractors and subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly pursuant to Labor

Code section 1771.4(a)(3); and (4) provide all notices required pursuant to 1771.1, 1771.4 and 1771.3.

- 4.14. AIDS Discrimination: Town agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.
- 4.15. Inspection: Town shall inspect the Project and direct the contractor to promptly correct any deficiencies. Once all deficiencies are corrected, the Project shall be presented to the Windsor Town Council for acceptance.
- 4.16. Notice of Completion and Record Drawings: Upon acceptance of the Project by the Town Council, the Town shall file the Notice of Completion for construction and provide a copy to Sonoma Water within 30 calendar days of its filing. Town shall prepare record drawings showing any changes, deletions, or additions to the Project and provide reproducible set to Sonoma Water within 45 calendar days of filing the Notice of Completion.
- 4.17. Title: Title to the Project facilities constructed pursuant to this Agreement that are located within the Town shall vest with Town.
- 4.18. Operation and Maintenance: Town shall accept ownership of the portions of the Project facilities that are located within the Town's jurisdiction and shall operate and maintain those portions of the Project in perpetuity.
- 4.19. Records: Town shall 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 maintained by the Town in accordance with its adopted record retention schedule, and shall be available to Sonoma Water at all reasonable times for inspection and analysis during such retention period.
- 4.20. Statement of Costs: Within 60 days of filing Notice of Completion, or within 60 days of decision to not award the contract, Town shall submit to Sonoma Water a statement of complete accounting of Town's Project construction costs.
- 4.21. Invoices: Town shall bill Sonoma Water for costs authorized under this Agreement, with an invoice that is clearly marked with "Town of Windsor, Funding of Wastewater Pipeline Construction, Project-Activity Code A0097A002, and TW 23/24-055A."

5. SONOMA WATER'S RESPONSIBILITIES

- 5.1. Total Amount to be Funded: The total amount payable by Sonoma Water under this Agreement shall not exceed \$2,800,000.

5.2. Payment:

- a. Original Agreement: Upon execution of this Agreement and receipt of an invoice thereof, Sonoma Water shall deposit with Town \$1,500,000, which is to contribute to construction costs only. Sonoma Water shall remit payment to Town within sixty (60) days of receipt of the invoice. Payment shall be provided in a manner mutually agreed upon by the Parties.
- b. First Amended and Restated Agreement: Upon execution of this First Amended and Restated Agreement and receipt of an invoice thereof, Sonoma Water shall deposit with Town \$1,300,000, which is to contribute to construction costs only. Sonoma Water shall remit payment to Town within sixty (60) days of receipt of the invoice. Payment shall be provided in a manner mutually agreed upon by the Parties.

5.3. Review of Plans and Specifications: Sonoma Water will review and comment on draft Project Plans and Specifications. Sonoma Water is not responsible for engineering decisions and Sonoma Water's review is not a substitute for review and approval by the engineer in responsible charge of the Project.

5.4. Title: Title to the Project facilities constructed pursuant to this Agreement that are located within the boundaries of the Zone shall vest with Sonoma Water.

5.5. Operation and Maintenance: Sonoma Water shall accept ownership of the portions of the Project facilities that are located within the Zone's jurisdiction and shall operate and maintain those portions of the Project in perpetuity.

6. ADDITIONAL REQUIREMENTS

6.1. Term of Agreement:

- a. This Agreement shall expire on June 30, 2026, unless terminated earlier pursuant to Paragraph 6.5.
- b. The Parties may mutually agree to extend the term of this Agreement for up to two additional years in advance of the expiration date noted in this Paragraph. The extension shall be formalized in an amended agreement or amendment signed by Sonoma Water and Town. Sonoma County Water Agency's General Manager and the Town Manager shall have the authority to execute such amendment without further approval from either respective legislative body.

6.2. Excess Costs: If the Project costs exceed the total amount authorized under this Agreement, Sonoma Water shall fund Project costs in excess of the authorized amounts.

6.3. Authority to Amend Agreement: Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties.

6.4. Contract not Awarded: If contract is not awarded, Paragraphs 4.10 through 4.18 shall not apply.

6.5. Authority to Terminate:

- a. The Parties may mutually agree in writing to terminate this Agreement, in which case the date of termination shall be the effective date of the agreement to terminate.
- b. Should either Party 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, and such Party fails to cure such failure or breach after receiving written notice and a reasonable opportunity to cure from the other Party, then the non-breaching Party may immediately terminate this Agreement by giving the breaching Party written notice of such termination, stating the reason for termination. In the event of such termination, Sonoma Water will pay Town for services satisfactorily rendered to the date of termination. However, Sonoma Water will deduct from such amount the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by Town. Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager. Town's right to terminate may be exercised by the Town Manager.

6.6. Refund of Remaining Funds: If the Project cost accounting statement submitted under Paragraph 4.20 of this Agreement demonstrates that Project construction costs are less than the amounts paid to Town, Town shall refund difference to Sonoma Water within 30 calendar days of submitting said statement to Sonoma Water. If the Project is not awarded, Town shall refund the full amount to Sonoma Water within 30 calendar days of determination not to award.

6.7. No Waiver of Breach: The waiver by 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. Any waiver by either Party of any term or provision of this Agreement must be in writing.

6.8. Construction:

- a. 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.
- b. 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.

- 6.9. 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.
- 6.10. 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.
- 6.11. 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.
- 6.12. 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.
- 6.13. 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.
- 6.14. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.
- 6.15. Notices: Any notice which either Party is required by this Agreement to give to the other Party shall be in writing and either hand delivered or sent by certified first class mail addressed as provided in Paragraph 3.
- 6.16. Severability: Should any portion of this Agreement be determined by any court or other tribunal having jurisdiction to make such a determination to be illegal, invalid or otherwise unenforceable or ineffectual, the validity of the remaining portions of the Agreement shall not be affected by that determination.
- 6.17. Authority: The undersigned hereby represents and warrants that the undersigned has authority to execute and deliver this Agreement on behalf of Town.
- 6.18. Counterpart; Electronic Signatures: The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF), or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly

delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially-available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal E-SIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

7. **MUTUAL INDEMNIFICATION**

7.1. Each party to this Agreement (the “Indemnifying Party”) agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the “Indemnified Party”), and the Indemnified Party’s supervisors, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party’s breach of any material term of this Agreement, or Indemnifying Party’s negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from Indemnified Party’s breach of any material term of this Agreement, or Indemnified Party’s negligence or willful misconduct in connection with the performance of this Agreement. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party’s expense, subject to the Indemnifying Party’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 the parties hereto or their agents under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

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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.

Reviewed as to funds:

TW 23/24-055A

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

Approved as to form:

Approved as to form:

By: _____
Verne Ball, Deputy County Counsel

By: _____
Jose M. Sanchez, Town Attorney

Insurance Documentation is on file with
Sonoma Water

Date/TW Initials: 3/6/25 RV

Sonoma County Water Agency

Town of Windsor

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
May 13, 2025

By: _____
Jon Davis, Town Manager

Date: _____

Date: _____

Exhibit A

Project Description

In 2023 Sonoma Water and the Windsor Water District began a dialogue for a Wastewater Service Agreement for the Airport/Larkfield/Wikiup Sanitation Zone Treatment Facility to send raw and partially treated wastewater to the Windsor Water District wastewater treatment facility. A permanent sewer connection will be required for the continuous conveyance of raw or partially treated wastewater from Airport/Larkfield/Wikiup Sanitation Zone Treatment Facility to the Windsor Water District wastewater treatment facility. This project will construct a permanent sewer interconnection to intercept flows directed toward the Airport/Larkfield/Wikiup Sanitation Zone Treatment Facility and route these flows into the existing gravity sewer system operated by the Windsor Water District wastewater treatment facility.

The Project will consist of constructing an approximately 2,850-foot 24-inch diameter gravity pipeline, from the terminus of Freedom Way (800-feet), north along Skylane Boulevard (1,400-feet), then east along Shiloh Way (650-feet).

Exhibit B

Location Map



Exhibit C

Insurance Requirements

1. **SECTION I – INSURANCE TO BE MAINTAINED BY TOWN OF WINDSOR**

Town of Windsor shall maintain insurance, or equivalent self-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 one (1) year after completion of the Work.

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 Town of Windsor 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 Town of Windsor 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 Town of Windsor currently has no employees as defined by the Labor Code of the State of California, Town of Windsor 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 Town of Windsor maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Town of Windsor.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it

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

- d. Sonoma County Water Agency, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of Town of Windsor'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 Town of Windsor 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 Town of Windsor owns vehicles.
- c. Insurance shall cover hired and non-owned vehicles.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by Sonoma Water.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.5. 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.

1.6. Documentation

- a. The Certificate of Insurance must include the following reference:
TW 23/24-055A.
- b. Town of Windsor shall submit required Evidence of Insurance prior to the execution of this Agreement. Town of Windsor agrees to maintain current Evidence of Insurance on file with Sonoma Water for the required period of insurance.
- 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. Town of Windsor 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.

1.7. Policy Obligations

- a. Town of Windsor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

2. SECTION II – INSURANCE TO BE MAINTAINED BY TOWN OF WINDSOR'S CONTRACTORS

Town's contractor (Contractor) shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Contractor shall not commence Work, nor allow its employees, subcontractors or anyone to commence Work until the required insurance has been submitted and approved by Sonoma Water. Any requirement for Contractor to maintain insurance after completion of the Work shall survive this 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 Contractor 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.

- 2.1. Workers Compensation and Employers Liability Insurance
- a. Required if Contractor 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. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Sonoma Water.
 - e. Required Evidence of Insurance:
 - i. Subrogation waiver endorsement and
 - ii. Certificate of Insurance
 - f. If Contractor currently has no employees as defined by the Labor Code of the State of California, Contractor 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.
- 2.2. 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 General Aggregate shall apply separately to each Project. The required limits may be satisfied by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Contractor.
 - c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000, it must be approved in advance by Sonoma Water. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Sonoma Water.
 - d. Insurance shall be continued for one (1) year after completion of the Work.
 - e. Sonoma County Water Agency, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this Agreement. The foregoing shall continue to be additional insureds for (1) year after completion of the Work under this Agreement.

- f. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g. 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).
- h. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against Sonoma Water.
- i. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a “separation of insureds” or “severability” clause which treats each insured separately.
- j. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Certificate of Insurance.

2.3. 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 autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

2.4. Contractors Pollution Liability Insurance

- a. Minimum Limits: \$1,000,000 per pollution Incident; \$1,000,000 Aggregate. If Contractor maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- b. The policy shall cover:
 - i. Bodily injury, sickness, or disease sustained by any person, including death;
 - ii. Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof;
 - iii. Cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and natural resources damages;
 - iv. Loss arising from pollutants including but not limited to fungus, bacteria, asbestos, lead, silica, and contaminated drywall;

- v. Contractual liability coverage for liability assumed by Contractor under a written contract or agreement;
 - vi. Claims arising from owned and non-owned disposal sites utilized in the performance of this Agreement; and
 - vii. Inter-insured suits between the additional insureds and Contractor and shall include a "separation of insureds" or "severability" clause which treats each insured separately.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000, it must be approved in advance by Sonoma Water. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Sonoma Water.
 - d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of work.
 - e. Contractor shall maintain the insurance for one (1) year after completion of the work. If the insurance is on a Claims-Made basis, the continuation coverage may be either: (a) a renewal of the existing policy; (b) an extended reporting period endorsement; or (c) a replacement insurance policy with a retroactive date no later than the commencement of the work.
 - f. Sonoma County Water Agency, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of Contractor in the performance of this Agreement. The foregoing shall continue to be additional insureds for (1) year after completion of work under this Agreement.
 - g. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
 - h. Required Evidence of Coverage:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status,
 - ii. Copy of the endorsement or policy language indicating that coverage is primary and non-contributory, and
 - iii. Certificate of Insurance including an indication of the coverage basis: occurrence or claims-made. If claims-made, the Certificate shall show the policy retroactive date.

2.5. 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.

2.6. Documentation

- a. The Certificate of Insurance must include the following reference:
TW 23/24-055A.
- b. Contractor shall submit all required Evidence of Insurance prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Sonoma Water as specified in Sections 2.1, 2.2, 2.3, or 2.4 above for the required period of insurance.
- 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. Contractor shall submit Required Evidence of Insurance 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. Contractor 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, Contractor shall provide certified copies of required insurance policies within thirty (30) days.

2.7. Policy Obligations

- a. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

2.8. Material Breach

- a. If Contractor fails to maintain insurance which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. Sonoma Water, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to Contractor, Sonoma Water may deduct from sums due to Contractor any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.