

First Amended and Restated Agreement for Funding of Town of Windsor's Recycled Water Design Project

DRAFT 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. Town owns and operates a water reclamation system which includes a water reclamation plant, recycled water storage ponds, a transmission system that discharges to Mark West Creek, a recycled water distribution system providing for agricultural irrigation and urban uses, and infrastructure for delivery to the Geysers Geothermal Project.
- B. Town has been studying and improving its wastewater treatment and wastewater recycling program for over ten years.
- C. In March 2021 Town secured additional recycled water storage resources through an agreement with Sonoma Water. That agreement allows for the coordinated operation of the two agency systems and includes provisions for Town to utilize excess recycled water storage at Sonoma Water’s facilities, when available. Town’s ability to store greater volumes of recycled water creates an opportunity for Town to pursue expansion of its recycled water distribution system.
- D. The Recycled Water Supply Design Project is described in Exhibit A and is hereinafter referred to as “Project.”
- E. Per Section 4.15 Operations and Maintenance Charge - Recycled Water and Local Supply, of the Restructured Agreement for Water Supply (2006), Town desires to use funding from the Recycled Water and Local Supply fund to move forward with the Project, including California Environmental Quality Act (CEQA) documentation.
- F. Under this agreement, Town hired a consultant to prepare initial design plans, along with CEQA documentation.
- G. Funding to offset a portion of the costs to be incurred by Town was available from Sonoma Water’s FY 2022/2023 appropriations in the amount of \$450,000 from the Recycled Water and Local Supply Fund Balance (Town of Windsor reserve account).
- H. Town requested \$450,000 from Sonoma County Water Agency's Recycled Water/Local Supply fund for the design of the Project.
- I. Sonoma Water and Town do mutually desire to cooperate in the design and financing of the Project.
- J. Town wishes to expedite design of the Project.
- K. Sonoma Water and Town first entered into this Agreement on August 15, 2023, in the amount of \$450,000.

- L. This First Amended and Restated Agreement increases the amount by \$200,000, for a new not-to-exceed Agreement total of \$650,000 with no change to scope of work and adding one year, for a new term end date of December 31, 2025.
- M. The additional \$200,000 is available from Sonoma Water’s Fiscal Year 2023/2024 budget for the Airport/Larkfield/Wikiup Sanitation Zone (ALWSZ) fund. Sonoma Water is providing it to the Town as a share of cost because the Project will include using recycled water from ALWSZ.

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: 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: vsiwy@townofwindsor.com
Remit invoices to:	Remit payments to:
Accounts Payable Same address as above or Email: ap.agreements@scwa.ca.gov	Attn: Accounts Payable 9291 Old Redwood Highway Windsor, CA 95492 Email: accountspayable@townofwindsor.com

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 6 below.

- 4.1. **General:** Town agrees to perform all work in accordance with the requirements of applicable federal, state, and local laws, including all state and local orders and guidance related to COVID-19 as may be amended from time to time.
- 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. **Insurance Requirements and Indemnification Obligations:**
 - a. **Insurance Requirements:** Town shall maintain and shall require all of its consultants and other agents to maintain insurance as described in Exhibit C (Insurance Requirements). Evidence of insurance shall be submitted to Sonoma Water as specified in Exhibit C.
 - b. **Indemnification Obligation of Town's Consultants:**
 - i. Town shall include the following language in its consultant agreement(s):
 - a) Consultant 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, that arise out of, pertain to, or relate to consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant 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 or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant'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 expense, subject to consultant'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 or its agents under workers' compensation acts, disability benefits acts, or other

employee benefit acts. This indemnity provision survives the Agreement.

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

4.4. **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 available to Sonoma Water at all reasonable times for inspection and analysis.

4.5. **Invoices:** Town shall bill Sonoma Water quarterly for costs authorized under this Agreement, with invoices that are clearly marked with "Town of Windsor, Funding of Recycled Water Design Project, Project Activity Code No. A0005A002, and TW 22/23-035A." Invoices shall include a complete cost accounting by task (Quarterly Status Report).

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 \$650,000.

5.2. **Payment:** Upon receipt, review, and approval of invoice and Quarterly Status Report, Sonoma Water will reimburse Town for Town's design cost as authorized herein and itemized in said invoice(s).

6. ADDITIONAL REQUIREMENTS

6.1. **Term of Agreement:**

a. This Agreement shall expire on December 31, 2025, unless terminated earlier pursuant to Paragraph 6.3.

b. Sonoma Water shall have two options to extend this Agreement for a period of one year each by providing written notice to Town thirty days in advance of the expiration date noted in this Article and of the first extension option. The extension shall be formalized in an amended agreement or amendment signed by Sonoma Water and Town.

6.2. **Authority to Amend Agreement:** 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.

- 6.3. Authority to Terminate:
- a. At any time and without cause, Sonoma Water has the right, in its sole discretion, to terminate this Agreement by giving five calendar days' written notice to Town. In the event of such termination, Sonoma Water will pay Town for services satisfactorily rendered to the date of termination. In addition, should Town 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 Town 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.
- 6.4. Excess Costs: If the Project costs exceed the total amount authorized under this Agreement, Town shall fund Project costs in excess of the authorized amounts without additional contribution from Sonoma Water.
- 6.5. Refund of Remaining Funds: If the Project 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.
- 6.6. 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.
- 6.7. 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.

- 6.8. 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.
- 6.9. 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.
- 6.10. 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.
- 6.11. 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.
- 6.12. 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.
- 6.13. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.
- 6.14. 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.

/

/

/

/

/

/

/

/

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

TW 22/23-035A

Reviewed as to funds:

Reviewed as to funds:

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

By: _____
Jeneen Peterson, Administrative Services
Director, Town of Windsor

Approved as to form:

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

By: _____
Jose Sanchez, Town Attorney, Town
Council

Insurance Documentation is on file with
Sonoma Water

Date/TW Initials: 2/26/24rv

Sonoma County Water Agency

Town of Windsor

By: _____
Grant Davis
General Manager

By: _____
Jon Davis, Town Manager/General
Manager

Authorized per Sonoma County Water
Agency's Board of Directors Action on
April 16, 2024

Date: _____

Date: _____

Exhibit A

Project Description

In 2013 the Town of Windsor adopted an Urban Recycled Water Facilities Planning Study (2013 Study), drafted by West Yost & Associates, Inc. This Study developed and evaluated priority recycled water projects for the Town of Windsor. The 2013 Study included a market assessment of recycled water demand and an analysis of proposed recycled water project alternatives. The 2013 Study recommended expanding recycled water to the southernmost part of the Town's potable distribution system, also referred to as the Airport Business Park. The Airport Business Park is in the unincorporated area of Sonoma County and is bordered by Highway 101 to the east, Mark West Creek to the south, Slusser Road to the West, and the Town of Windsor to the North, shown as "Project 5" in the map as Target Area G and Airport Areas A & B, included as Exhibit B.

The Airport Business Park service area, based on an evaluation using specific ranking criteria and overall cost-effectiveness, was selected by Town to update in the 2013 study. Based on the 2013 Study update, Town's consultant will develop 30% design and environmental documentation (Project). The 2013 Study update estimates approximately 102 – 535 acre-feet of potable water would be offset each year by expanding the Town of Windsor's recycled water system to the Airport Business Park service area. An update to the assumptions in the 2013 Study regarding potable offset through recycled water distribution to the Airport Business Park service area would permit the Town to move forward with development of system design and to pursue potential funding opportunities.

Exhibit B

Map

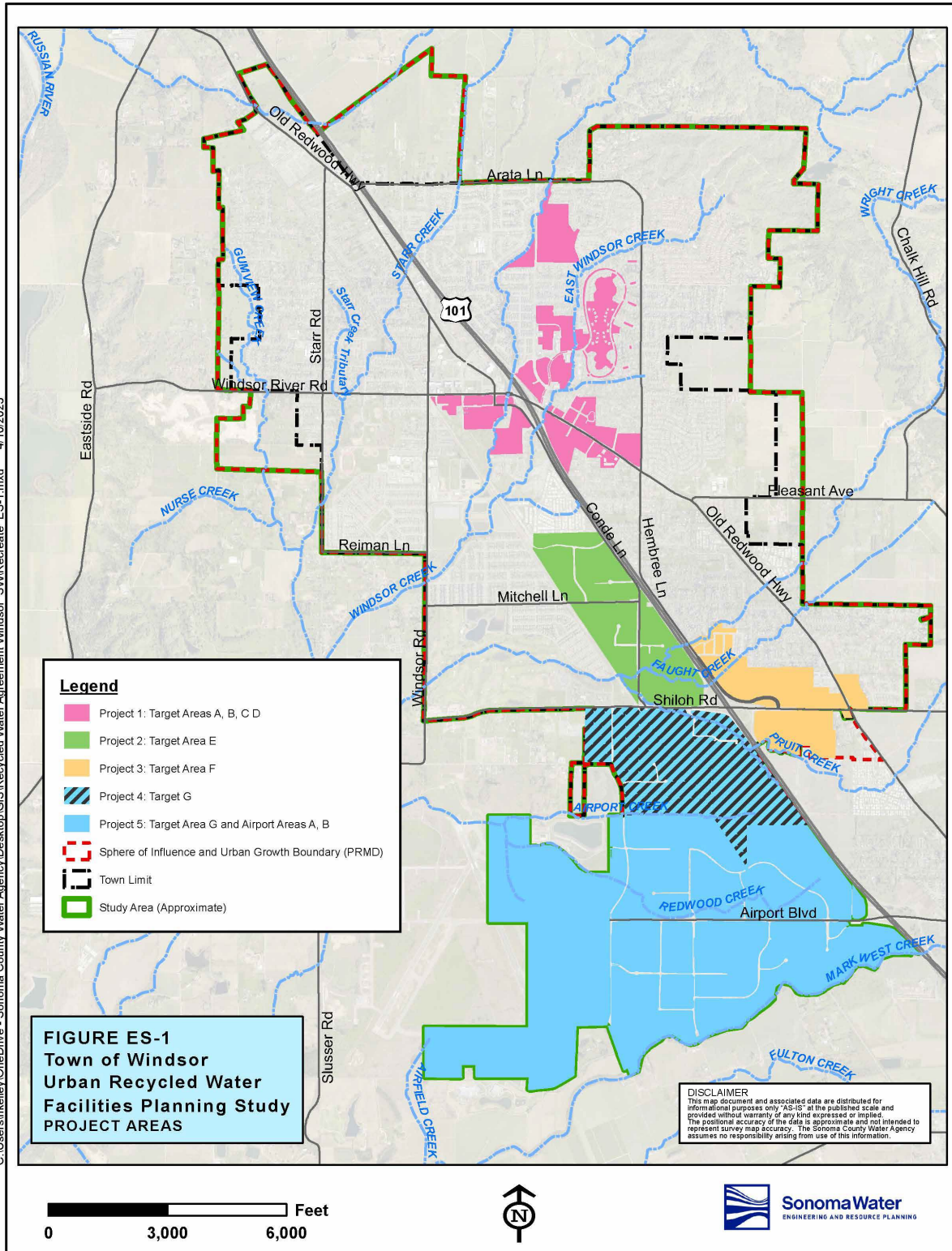


Exhibit C

Insurance Requirements

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

Town of Windsor shall maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Insurance coverage applicable to the work performed under this Agreement shall be continued for two years 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 \$25,000 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 \$25,000 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 22/23-035A.
 - 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 AND/OR CONSULTANTS**

With respect to performance of work under this Agreement, Town's contractors and/or consultants (Town's subconsultant[s]) shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained 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. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Town's subconsultant(s) 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 Town's subconsultant(s) have 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's subconsultant(s) currently have no employees as defined by the Labor Code of the State of California, Town's subconsultant(s) agree 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 required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Town's subconsultant(s) maintain higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Town's subconsultant(s).
- 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 must be approved in advance by Sonoma Water. Town's subconsultant(s) are responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Town's subconsultant(s) have 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, and the Town of Windsor, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Town's subconsultant(s) in the performance of this Agreement.
- 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 Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Town's subconsultant(s) 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.
- 2.3. Automobile Liability Insurance
- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
 - b. Insurance shall cover all owned autos. If Town's subconsultant(s) currently owns no autos, Town's subconsultant(s) 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. Professional Liability/Errors and Omissions Insurance
- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
 - b. 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 must be approved in advance by Sonoma Water.
 - c. If Town's subconsultant(s) services include: (1) programming, customization, or maintenance of software or (2) access to individuals' private, personally identifiable information, the insurance shall cover:
 - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
 - ii. Claims against Town's subconsultant(s) arising from the negligence of Town's subconsultant(s), Town's subconsultant(s) employees and Town's subconsultant(s) subcontractors.
 - d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
 - e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
 - f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made 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 22/23-035A.
 - b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Town's subconsultant(s) agree to maintain current Evidence of Insurance on file with Sonoma Water for the entire term of this Agreement and any additional periods if specified in Sections 2.1, 2.2, 2.3, or 2.4 above.
 - 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's subconsultant(s) shall provide immediate written notice if: (1) any of the required insurance policies is 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.
- 2.7. Policy Obligations
- a. Town's subconsultant(s) indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 2.8. Material Breach
- a. If Town's subconsultant(s) fail to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Sonoma Water, at its sole option, may terminate this Agreement and obtain damages from Town's subconsultant(s) resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to Town's subconsultant(s), Sonoma Water may deduct from sums due to Town's subconsultant(s) any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.