

AGREEMENT BY AND BETWEEN SONOMA COUNTY WATER AGENCY
AND THE CITY OF SANTA ROSA
FOR WATER QUALITY TRADING FRAMEWORK (PHOSPHOROUS)

This agreement ("Agreement") is by and between Sonoma County Water Agency, a body corporate and politic of the State of California ("Sonoma Water"), and the City of Santa Rosa ("City"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement.

RECITALS

- A. On July 24, 2008, the North Coast Regional Water Quality Control Board ("Regional Water Board") adopted Resolution R1-2008-0061, thereby approving the City of Santa Rosa Nutrient Offset Program ("NOP") as a method of compliance with the "no net loading" effluent limitations for total nitrogen and total phosphorus contained in the City's National Pollutant Discharge Elimination System ("NPDES") permit authorizing discharges from what is now known as the Santa Rosa Regional Water Reuse System, Laguna Treatment Plant ("LTP").
- B. The NOP allowed City to offset the discharge of nitrogen and/or phosphorus contained in its treated wastewater effluent by conducting work that either prevented or removed equal or greater amounts of phosphorus from unregulated sources of discharge elsewhere in the Laguna de Santa Rosa Watershed.
- C. On November 21, 2013, the Regional Water Board issued another NPDES permit to City (Order No. R1-2013-001) with the same "no net loading" effluent limitation for total phosphorus that was in the City's 2006 permit.
- D. The Regional Water Board subsequently adopted its Water Quality Trading Framework for the Laguna de Santa Rosa Watershed ("WQTF") on July 11, 2018, by Resolution No. R1-2018-0025, which provides for a system of tradable and saleable phosphorus credits ("P Credits") that can be used by City or Town as offsets to comply with the "no net loading" effluent limitation for total phosphorus contained in each of City and Town's NPDES permits.
- E. On August 20, 2020, the Regional Water Board issued the City a new NPDES permit by Order No. R1-2020-012, which included Attachment I, a revised version of the WQTF (attached hereto as Exhibit A) to replace the NOP as a method of compliance with the "no net loading" effluent limitation for total phosphorus and provided for the transfer of unused P Credits previously approved under the NOP to the WQTF accounting system.
- F. On December 2, 2021, the Regional Water Board amended the WQTF and Fact Sheet portions of the City's NPDES permit (Amendment Order No. R1-2021-041), which clarified that the WQTF adopted with a NPDES permit was the operative framework for compliance purposes ("Permit WQTF") (the Permit WQTF is attached hereto as Exhibit B).
- G. At the City's request, Sonoma Water has submitted a Proposal under the Permit WQTF to the Regional Water Board for the purpose of obtaining approval of P Credits derived from Sonoma Water's Streambed Maintenance Program operations ("Proposal") (attached hereto as Exhibit C). The Proposal is within the scope of Sonoma Water's existing CEQA entitlements for the Streambed Maintenance Program and requires no further regulatory entitlements.
- H. 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.
- I. 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 as included in the City of Santa Rosa's waste discharge requirements, NPDES Permits, Order No. R1-2020-0012, as modified by Amendment Order R1-2021-0041.

- J. 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. City intends to apply these P Credits toward its compliance with permitting requirements on discharges from the Laguna Treatment Plant.
- K. On April 9, 2024, the Regional Water Board confirmed the validity of the credits transferred pursuant to this Agreement. (Exhibit D)
- L. Through this Agreement, Sonoma Water intends to sell, and City intends to purchase sixteen thousand forty-nine (16,049) pounds of P Credits at a cost of \$60 per pound ($\$60 \times 16,049 = \$962,940.00$), less a credit of one hundred eighty five thousand and fifty dollars (\$185,850) for Sonoma Water's share for disposal of sediment (calculated at \$10 per cubic yard, with 18,585 cubic yards), for a resulting total cost of seven hundred seventy-seven thousand, and ninety dollars (\$777,090).

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

AGREEMENT

1. RECITALS

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

2. LIST OF EXHIBITS

The following exhibits are attached hereto and incorporated herein:

- a. Exhibit A: Attachment I to Order No. R1- 2020-012, revised WQTF.
- b. Exhibit B: Permit WQTF
- c. Exhibit C: Sonoma Water, Water Quality Trading Project Proposal (Proposal)
- d. Exhibit D: North Coast Regional Water Quality Control Board "Colgan Creek Reaches 1 and 2, Water Quality Credit Generating Project, Credit Certification Letter

3. CREDIT TRANSFER

- 3.1. *Payment terms*: The City agrees to pay Sonoma Water \$60 per pound of P Credit, for 16,049 pounds of P Credit, at a cost of \$962,940.00. Sonoma Water agrees to credit Sonoma Water's share of the disposal cost of 18,585 cubic yards of sediment removed (\$185,850) for a resulting total cost to the City of \$777,090.
- 3.2. *Nature of P Credits*: P Credits exist pursuant to the Regional Water Board's adopted policies, programs and orders. 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 Permit WQTF, not by this Agreement. This

P Credit sale is “as-is”, and Sonoma Water makes no warranty that any certified P Credits may be used for any purpose.

4. PAYMENT

4.1. *Total Costs:* City shall pay Sonoma Water \$777,090.00.

4.2. *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. City agrees to indemnify, hold harmless, and release Sonoma Water, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including City, that arise out of, pertain to, or relate to City’s reliance upon P Credits for regulatory compliance.

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

6. ASSIGNMENT AND DELEGATION

6.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. Nothing in this provision shall limit City’s ability to transfer P Credits, to the extent it is permitted to do so by the Regional Water Board.

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

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

Sonoma Water	City of Santa Rosa
General Manager Sonoma Water 404 Aviation Boulevard Santa Rosa, CA 95403	Jennifer Burke City of Santa Rosa 69 Stony Circle Santa Rosa, CA 95401

8. MISCELLANEOUS

- 8.1. *No Waiver of Breach:* The waiver by Sonoma Water of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 8.2. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. City and Sonoma Water acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 8.3. *Consent:* Wherever in this Agreement the consent or approval of one party is required for an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 8.4. *No Third-Party Beneficiaries:* Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 8.5. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 8.6. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 8.7. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure section 1856. Each party acknowledges that, in entering into this Agreement, it has not relied on any representation or

undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

- 8.8. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 8.9. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

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

Reviewed as to substance by the Sonoma Water:

Reviewed as to substance by the City of Santa Rosa

General Manager

Santa Rosa Water Director

Reviewed as to form by Sonoma Water Counsel:

Reviewed as to form by City Attorney:

Sonoma Water Counsel

City of Santa Rosa Attorney

Attest:

Attest:

City of Santa Rosa

By: _____

Chair, Board of Public Utilities

Date: _____