

Second Amended Agreement for Forecast Informed Reservoir Operations Hydrometeorology Consulting Services

This second amended agreement ("Second Amended Agreement" or "Agreement") is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California ("Sonoma Water") and **Robert K. Hartman**, an individual ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Article 5 (Term of Agreement).

RECITALS

- A. Consultant served for 20 years as the Hydrologist-In-Charge for the National Weather Service California-Nevada River Forecast Center (CNRFC) and represents that he is an expert in hydrometeorology and related services.
- B. Sonoma Water's resource management and operations are significantly affected by extreme precipitation events (i.e., atmospheric rivers). Sonoma Water is involved in a number of projects and collaborations focused on improving water resources management and operations through increased knowledge of hydrometeorology.
- C. In 2015, Sonoma Water analyzed the water supply reliability of Lake Mendocino. The study found that Lake Mendocino's reliability has significantly decreased since Potter Valley Project inflows to the lake decreased in 2006. In addition, future growth and climate change are expected to further decrease the ability of Lake Mendocino to provide a reliable water supply for fisheries, municipalities, rural residents and agriculture.
- D. One of the projects initiated by Sonoma Water, in collaboration with several state and federal partners, is the Lake Mendocino Forecast Informed Reservoir Operations (FIRO) project. The FIRO project is evaluating the viability of utilizing current technology and forecasting skill in respect to reservoirs to improve water supply of Lake Mendocino without impairing flood management.
- E. Consultant has played a key role in the project as lead representative of the CNRFC and a member of the FIRO steering committee, but retired from CNRFC in September 2016.
- F. Sonoma Water has determined that the Consultant's expertise in hydrometeorology and relationships within the National Weather Service, NOAA, and CNRFC are essential for the continued success of the FIRO project. Consequently, Sonoma Water requires Consultant services for review services related to the Full Viability Assessment, development of decision support tools, facilitation with the CNRFC, and general consulting related to the FIRO project.
- G. Sonoma Water and Consultant first entered into this Agreement on October 5, 2016 ("Original Agreement").
- H. The First Amended Agreement was entered into on October 26, 2017, and extended the term two years to October 5, 2019, added new tasks to the scope, and increased the amount by \$100,000 for a new agreement total of \$150,000.

- I. This Second Amended Agreement extends the term by three years to October 5, 2022, adds a task, and increases the amount by \$200,000.
- J. In addition, this Second Amended Agreement changes occurrences of “Water Agency” to “Sonoma Water.”
- K. This Second Amended Agreement supersedes all previous agreements and amendments between the parties.

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

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
 - a. Exhibit A-1: Scope of Work under Original Agreement
 - b. Exhibit A-2: Scope of Work under First Amended Agreement
 - c. Exhibit A-3: Scope of Work under Second Amended Agreement
 - d. Exhibit B: Insurance Requirements
 - e. Exhibit C: Waiver of Insurance Requirements

3. SCOPE OF SERVICES

- 3.1. *Consultant’s Specified Services:* Consultant shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 9 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.
- 3.2. *Cooperation with Sonoma Water:* Consultant shall cooperate with Sonoma Water in the performance of all work hereunder. Consultant shall coordinate the work with Sonoma Water’s Project Manager. Contact information and mailing addresses:

Sonoma Water	Consultant
Project Manager: Chris Delaney 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-547-1946 Email: Chris.Delaney@scwa.ca.gov	Contact: Robert K. Hartman 1803 Sandmont Drive Roseville, CA 95661 Phone: 916-300-6727 Email: hydrologic.prediction@gmail.com

Sonoma Water	Consultant
Remit invoices to: Accounts Payable Same address as above or Email: ap_agreements@scwa.ca.gov	Remit payments to: Same address as above

- 3.3. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Sonoma Water shall not operate as a waiver or release. Sonoma Water has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. If Sonoma Water determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Sonoma Water, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Sonoma Water to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 6 (Termination); or (d) pursue any and all other remedies at law or in equity.
- 3.4. *Assigned Personnel:*
- Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time Sonoma Water, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from Sonoma Water.
 - Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Sonoma Water to be key personnel whose services were a material inducement to Sonoma Water to enter into this Agreement, and without whose services Sonoma Water would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Sonoma Water.
 - In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

4. **PAYMENT**

4.1. *Total Costs:*

- a. Total costs under this Agreement shall not exceed \$350,000, as follows:
 - i. Year 1 costs shall not exceed \$50,000.
 - ii. Year 2 costs shall not exceed \$50,000.
 - iii. Year 3 costs shall not exceed \$70,000.
 - iv. Year 4 costs shall not exceed \$80,000.
 - v. Year 5 costs shall not exceed \$50,000.
 - vi. Year 6 costs shall not exceed \$50,000.
- b. Total costs shall not be exceeded, regardless of whether it takes Consultant more time to complete or costs more than anticipated.

4.2. *Method of Payment:* Consultant shall be paid in accordance with the following terms:

- a. Consultant shall be paid an hourly rate of \$175 for work done during Year 1. For work done during Year 2 and Year 3, Consultant shall be paid an hourly rate of \$200. For work done in Years 4, 5, and 6, Consultant shall be paid an hourly rate of \$210, \$217, and \$225, respectively. In the event Sonoma Water invokes the option to extend the term of the Agreement for Year 7 under Paragraph 5.2, for Year 7 Consultant will be paid an hourly rate of \$233. In the event Sonoma Water invokes the option to extend the term of the Agreement for Year 8 under Paragraph 5.2, for Year 8 Consultant will be paid an hourly rate of \$241. Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified below in Paragraph 4.2.b. Expenses not expressly authorized by the Agreement shall not be reimbursed.
- b. Reimbursable expenses include the following: mileage, lodging, meals, and airfare as required and approved.

4.3. *Invoices:* Consultant shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by Sonoma Water. The bills shall show or include:

- a. Consultant name
- b. Name of Agreement
- c. Sonoma Water's Project-Activity Code W0045D035.
- d. Task performed with an itemized description of services rendered by date
- e. Summary of work performed by subconsultants, as described in Paragraph 14.4
- f. Time in quarter hours devoted to the task
- g. Hourly rate or rates of the persons performing the task

- h. List of reimbursable materials and expenses
- i. Copies of receipts for reimbursable materials and expenses

4.4. *Funding:*

- a. Funding for this Agreement is as follows:

<i>Previous Fiscal Years</i>	<i>Appropriation</i>
2016/2017	\$50,000
2017/2018	\$50,000
2018/2019	\$50,000
<i>Current Fiscal Year</i>	<i>Budgeted Appropriation</i>
2019/2020	\$100,000
<i>Subsequent Fiscal Years</i>	<i>Planned Appropriation</i>
2020/2021	\$50,000
2021/2022	\$50,000

- b. Availability of Funding in Subsequent Fiscal Years:
 - i. Sonoma Water's performance under this Agreement in subsequent years is contingent upon appropriation of funds by Sonoma Water's Board of Directors. Sonoma Water shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Sonoma Water's Board of Directors for the purpose of this Agreement.
 - ii. If funding for this Agreement for any fiscal year is reduced or eliminated by Sonoma Water's Board of Directors, Sonoma Water shall have the option to either terminate this Agreement in accordance with Article 6 (Termination) or offer an amendment to Consultant to reflect the reduced amount.

5. **TERM OF AGREEMENT**

- 5.1. The term of this Agreement shall be from October 5, 2016 ("Effective Date") to October 5, 2022, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- 5.2. Sonoma Water shall have two options to extend this Agreement for a period of one year each by providing written notice to Consultant thirty days in advance of the expiration date noted in this Article and of the first extension option.

6. **TERMINATION**

- 6.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma Water's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Sonoma Water shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant 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 Consultant written notice of such termination, stating the reason for termination.
- 6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Sonoma Water all materials and work product subject to Paragraph 12.8 and shall submit to Sonoma Water an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by Sonoma Water, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if Sonoma Water terminates the Agreement for cause pursuant to Paragraph 6.3, Sonoma Water shall deduct from such amounts the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by Consultant.

7. INDEMNIFICATION

- 7.1. 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 Article 7 apply whether or not there is concurrent 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, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. INSURANCE

- 8.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B (Insurance Requirements).

9. PROSECUTION OF WORK

- 9.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

10. EXTRA OR CHANGED WORK

- 10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma Water's General Manager in a form approved by County Counsel. The parties expressly recognize that Sonoma Water personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Sonoma Water.

11. CONTENT ONLINE ACCESSIBILITY

- 11.1. *Accessibility:* Sonoma Water policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Sonoma Water/County-managed or Sonoma Water/County-

funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794(d)), and Sonoma Water's Web Site Accessibility Policy located at <http://webstandards.sonoma-county.org>.

- 11.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), Consultant shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g., Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 11.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with Sonoma Water staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 11.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Sonoma Water's Web Site Accessibility Policy shall be the responsibility of Consultant. If Sonoma Water, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Sonoma Water/County-managed or Sonoma Water/County-funded Web site does not comply with Sonoma Water Accessibility Standards, Sonoma Water will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to Sonoma Water, repair or replace the non-compliant materials within such period of time as specified by Sonoma Water in writing. If the required repair or replacement is not completed within the time specified, Sonoma Water shall have the right to do any or all of the following, without prejudice to Sonoma Water's right to pursue any and all other remedies at law or in equity:
 - a. Cancel any delivery or task order
 - b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
 - c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for Sonoma Water, Sonoma Water may have any necessary changes or repairs performed by itself or by another contractor. In such event, Consultant shall be liable for all expenses incurred by Sonoma Water in connection with such changes or repairs.
- 11.6. *Sonoma Water's Rights Reserved:* Notwithstanding the foregoing, Sonoma Water may accept deliverables that are not strictly compliant with Sonoma Water Accessibility Standards if Sonoma Water, in its sole and absolute discretion, determines that acceptance of such products or services is in Sonoma Water's best interest.

12. REPRESENTATIONS OF CONSULTANT

- 12.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Sonoma Water and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Sonoma Water provides its employees. In the event Sonoma Water exercises its right to terminate this Agreement pursuant to Article 6 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *Taxes:* Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold Sonoma Water harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Sonoma Water is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish Sonoma Water with proof of payment of taxes on these earnings.
- 12.3. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Sonoma Water for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.
- 12.4. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by Sonoma Water, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Sonoma Water within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.5. *Statutory Compliance/Living Wage Ordinance:* Consultant agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are

changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

- 12.6. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.7. *Assignment of Rights:* Consultant assigns to Sonoma Water all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Sonoma Water in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Sonoma Water may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Sonoma Water. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Sonoma Water.
- 12.8. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Sonoma Water. Sonoma Water shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to Sonoma Water all such documents, which have not already been provided to Sonoma Water in such form or format as Sonoma Water deems appropriate. Such documents shall be and will remain the property of Sonoma Water without restriction or limitation. Consultant may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Sonoma Water.

13. DEMAND FOR ASSURANCE

- 13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits Sonoma Water's right to terminate this Agreement pursuant to Article 6 (Termination).

14. ASSIGNMENT AND DELEGATION

- 14.1. *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.
- 14.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 14.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 14.2. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 14.2 above:
- a. Prior to entering into any contract with subconsultant, Consultant shall obtain Sonoma Water approval of subconsultant. Sonoma Water's Board of Directors must approve the selection of any subconsultant if the amount payable to subconsultant under the agreement exceeds \$25,000. In connection with such approval, Consultant shall provide Sonoma Water with copies of the responses to Consultant's Request for Proposals (RFP) to subconsultants, the names of key personnel who will be performing work under the agreement, and an explanation of Consultant's reasons for

choosing the recommended subconsultant based upon the criteria in the RFP.

- b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Sonoma Water in substantially the same form as that contained in Article 7, (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.

14.4. *Summary of Subconsultants' Work:* Consultant shall provide Sonoma Water with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

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

15.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.

15.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 15.

16. **MISCELLANEOUS PROVISIONS**

16.1. *No Bottled Water:* In accordance with Sonoma Water Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Sonoma Water funding shall be used to purchase single-serving, disposable water bottles for use in Sonoma Water facilities or at Sonoma Water-sponsored events. This restriction shall not apply when potable water is not available.

16.2. *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.

- 16.3. *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. Consultant 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. Consultant and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 16.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 16.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 16.6. *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.
- 16.7. *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.
- 16.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 16.9. *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.
- 16.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

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

Reviewed as to funds:

TW 16/17-036B

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

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
Sonoma Water

Date/TW Initials: 8/12/19 crt

Sonoma County Water Agency

Robert K. Hartman

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
September 17, 2019

By: _____

Date: _____

Date: _____

Exhibit A-1

Scope of Work under Original Agreement

1. **COMMENCEMENT OF WORK**

- 1.1. Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

2. **TASKS**

- 2.1. Task 1: Review Preliminary Viability Assessment (PVA) and provide written comments

Deliverable	Due Date
PVA comment	TBD

- 2.2. Task 2: Assist in responding to comments on PVA from third party review panel

Deliverable	Due Date
Summary email or memo	Upon completion

- 2.3. Task 3: Attend and participate in steering committee calls and meetings

Deliverable	Due Date
Summary email or memo	Within 1 week of meeting

- 2.4. Task 4: Assist in developing FIRO implementation strategies and decision support tools.

Deliverable	Due Date
Summary email or memo	Quarterly

- 2.5. Task 5: Assist in coordinating project activities with CNRFC, National Weather Service, and NOAA as requested by Sonoma Water's project manager

Deliverable	Due Date
Summary email or memo	Quarterly

- 2.6. Task 6: General consulting on FIRO and reservoir operations and hydrometeorology as requested by Sonoma Water's project manager

3. **DELIVERABLES**

- 3.1. Submit one electronic copy in PDF format (emailed or on CD) and three hard copies of Task 2.1 deliverable to Sonoma Water.
- 3.2. Comply with requirements of Paragraph 11 (Content Online Accessibility)

Exhibit A-2

Scope of Work under First Amended Agreement

1. **COMMENCEMENT OF WORK**

- 1.1. Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

2. **TASKS**

- 2.1. Task 1: Attend, participate, and assist in steering committee calls and meetings.

Deliverable	Due Date
Summary email or response to issued minutes	Within 1 week of meeting

- 2.2. Task 2: Assist in developing FIRO implementation strategies including the pathway toward an updated Water Control Manual for Lake Mendocino.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.3. Task 3: Assist in the preparation of minor and major deviation requests and associated analysis and documentation.

Deliverable	Due Date
As assigned by Interim Operations Team	As assigned and agreed

- 2.4. Task 4: Coordinate and oversee the development, implementation, and evolution of a decision support system (DSS) for Lake Mendocino operations under approved deviation requests.

Deliverable	Due Date
Status update email or memo	Quarterly

- 2.5. Task 5: Assist in the refinement and socialization of Sonoma Water's risk-based operations model for Lake Mendocino.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.6. Task 6: Coordinate and oversee a reservoir operations testbed where alternatives can be evaluated through mock-operations and hindcast analysis.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.7. Task 7: Coordinate with CNRFC to provide (1) required data and analysis for studies and (2) real-time forecasts in support of FIRO operations.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.8. Task 8: Assist in coordinating project activities and plans the CNRFC, National Weather Service, and NOAA as requested by Sonoma Water's project manager.

Deliverable	Due Date
As requested	As requested

- 2.9. Task 9: General consulting on FIRO and reservoir operations and hydrometeorology as requested by Sonoma Water's project manager.

3. **DELIVERABLES**

- 3.1. Submit one electronic copy in PDF format (emailed or on CD) and three hard copies of Task 2.1 deliverables to Sonoma Water.
- 3.2. Comply with requirements of Paragraph 11 (Content Online Accessibility)

Exhibit A-3

Scope of Work under Second Amended Agreement

1. **COMMENCEMENT OF WORK**

- 1.1. Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

2. **TASKS**

- 2.1. Task 1: Attend, participate, and assist in steering committee calls and meetings.

Deliverable	Due Date
Summary email or response to issued minutes	Within 1 week of meeting

- 2.2. Task 2: Assist in developing the Lake Mendocino FIRO Final Viability Assessment (FVA) including technical studies, analysis, evaluation, and document review.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.3. Task 3: Assist in developing FIRO implementation strategies including the pathway toward an updated Water Control Manual for Lake Mendocino.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.4. Task 4: Assist in the preparation of minor and major deviation requests and associated analysis and documentation.

Deliverable	Due Date
As assigned by Interim Operations Team	As assigned and agreed

- 2.5. Task 5: Coordinate and oversee the development, implementation, and evolution of a decision support system (DSS) for Lake Mendocino operations under approved deviation requests.

Deliverable	Due Date
Status update email or memo	Quarterly

- 2.6. Task 6: Assist in the refinement and socialization of Sonoma Water's risk-based operations model for Lake Mendocino.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.7. Task 7: Coordinate and oversee a reservoir operations testbed where alternatives can be evaluated through mock-operations and hindcast analysis.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.8. Task 8: Coordinate with CNRFC to provide (1) required data and analysis for studies and (2) real-time forecasts in support of FIRO operations.

Deliverable	Due Date
Status email or memo	Quarterly

- 2.9. Task 9: Assist in coordinating project activities and plans the CNRFC, National Weather Service, and NOAA as requested by Sonoma Water's project manager.

Deliverable	Due Date
As requested	As requested

- 2.10. Task 10: General consulting on FIRO and reservoir operations and hydrometeorology as requested by Sonoma Water's project manager.

3. **DELIVERABLES**

- 3.1. Submit one electronic copy in PDF format (emailed or on CD) and three hard copies of Task 2.1 deliverables to Sonoma Water.
- 3.2. Comply with requirements of Paragraph 11 (Content Online Accessibility)

Exhibit B

Insurance Requirements

With respect to performance of work under this Agreement, Consultant 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 Consultant 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. INSURANCE

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees.
- 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 Consultant currently has no employees, Consultant 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 Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- 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. Consultant is responsible

for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Consultant 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 operations by or on behalf of the Consultant 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 Consultant 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: \$300,000 Combined Single Limit per Accident; or Bodily Injury: \$100,000 per person/\$300,000 per accident and Property Damage: \$50,000 per accident.
- b. Required Evidence of Insurance:
 - i. Copy of Auto Policy Declarations Page; or
 - ii. Certificate of Insurance.

1.4. 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.

1.5. Documentation

- a. The Certificate of Insurance must include the following reference: TW 16/17-036B.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees 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 1.1, 1.2, or 1.3, 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. Consultant 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.

1.6. Policy Obligations

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

1.7. Material Breach

- a. If Consultant fails 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 Consultant resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to Consultant, Sonoma Water may deduct from sums due to Consultant any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.

Exhibit C

Waiver of Insurance Requirements



Exhibit C

Waiver of Insurance Requirements

This Exhibit modifies the insurance requirements as specified in Exhibit B

Department	Water Agency	Department Contact	Jay Jasperse	Phone	707-547-1959
Contractor, Consultant, Vendor, Licensee, Tenant		Robert K. Hartman			
Contact Person		Phone	916-300-6727		
Contract Term	1 Nov 2017	Contract Cost	\$50,000	Template #	3
Was there an RFP/RFQ or other competitive process for this agreement? Yes ___ No <input checked="" type="checkbox"/>					
If yes, was an exception to the Insurance Requirements noted in the Vendor's proposal? Yes ___ No ___					

- ♦ If only Section I waivers are required, submit to your Department Head or designee for signature. Do not submit to Risk.
- ♦ If only Section II waivers, or a combination of Section I and II waivers, are required, submit to Risk.

Section I - Department Waivers – (Must be designated "Department Waiver" in the Template Assistant)

Requirement to be Waived and Reason

- ☐ Workers Compensation: Waive Subrogation Waiver.
- ☐ General Liability: Waive General Aggregate per location or per project; General Aggregate is at least double the Occurrence Limit.
- ☐ General Liability: Waive requirement for Subrogation Waiver because insurer will not provide the coverage.
- ☐ General Liability (Suppliers of Products): Waive "Additional Insured – Vendors". County does not distribute the product to the public.
- ☐ General Liability (Special Events): Waive Products/Completed Operations Coverage. Licensee will not sell or distribute food or other tangible items at the event.
- ☐ General Liability (Instructors/Trainers): Waive General Liability. Training does not involve the use of hazardous equipment, participation in physical activity, or medical training.
- ☐ General Liability (Therapists, Counselors, Social Workers and Psychologists): Waive General Liability. All services are provided in the consultant's office or on County premises and acceptable evidence of professional liability insurance has been provided.
- ☒ Auto Liability: Waive coverage and/or limits. Consultant or Contractor does no driving on behalf of the County or the driving is limited to attendance at meetings at County/Entity facilities.
- ☐ Auto Liability (Suppliers of Products): Waive coverage because vendor's goods are delivered by common carrier or contract carrier.
- ☐ Property Insurance (Long Term Tenants): Waive Property Insurance requirement. Tenant has not made improvements to the property or the current construction cost of the improvements is less than \$25,000.
- ☐ Mold Liability: Landlord cannot obtain the insurance.
- ☐ Standards for Insurance Companies: Waive A.M. Best's rating requirement.

Approved by Department Head, Department Designee or Risk Management

Date 7/29/16

Section II - Risk Management Waivers

Submit to Risk with the agreement including the Scope of Work.

General Liability Waivers

- ☒ Waive requirement for coverage
Reason: low-risk work; consultant does not have this type of insurance
- ☐ Waive requirement for additional insured endorsement
Reason: _____
- ☐ Waive primary & non-contributory language (if evidence is required)
Reason: _____

Auto Liability Waivers

- ☐ Accept lower limits
Reason: _____
- ☐ Waive hired & non-owned auto liability
Reason: _____

Workers Compensation Waivers

- ☐ Waive requirement for subrogation waiver endorsement (if required)
Reason: _____

Professional Liability Waivers

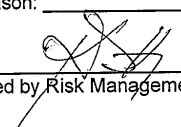
- ☐ Waive requirement for coverage
Reason: _____
- ☐ Accept lower limits
Reason: _____

Pollution Liability Waivers

- ☐ Waive requirement for coverage
Reason: _____
- ☐ Accept lower limits
Reason: _____
- ☐ Waive requirement for additional insured endorsement
Reason: _____

Other Waivers

- ☐ Describe: _____
Reason: _____


Approved by Risk Management

Date

7/29/16

Waiver of Insurance Requirements (fillable form)

Ver. 11/01/2015

Send

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