

## **DRAFT Agreement for Stormwater Education Program for Unincorporated Sonoma County, Cloverdale, and Ukiah**

This agreement ("Agreement") is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California ("Sonoma Water") and **West Yost Associates**, a California corporation ("West Yost"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

### **RECITALS**

- A. Sonoma Water's Water Education Program is a comprehensive approach to helping educators teach students the value of water as an important natural resource. The goal of the Water Education Program is for students to become environmental stewards and informed citizens who can examine the world through an inquisitive, scientific lens.
- B. The Water Education Program promotes water-use efficiency and stewardship of local watersheds through a curriculum including third and fourth grade classroom programs, a musical assembly program, an annual Water Awareness Poster Contest and calendar, a fifth grade classroom and field trip program, and teacher workshops. The Stormwater Education Program is one component of the overall Water Education Program.
- C. The Water Education Program services Russian River Watershed Association (RRWA) member agencies within Sonoma Water's service area, including the cities of Santa Rosa, Healdsburg, Rohnert Park, and Cotati; and the Town of Windsor.
- D. Sonoma Water, through collaboration with Sonoma Clean Power, is now able to offer the Water Education Program's Stormwater Education Program to certain areas beyond Sonoma Water's service boundary. This includes the cities of Cloverdale and Ukiah, and the County of Sonoma (unincorporated areas). Under this Agreement, Sonoma Water will provide a Stormwater Education Program to these three jurisdictions.

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: Scope of Work

b. Exhibit B: Sample Rates and Expenses

3. **SCOPE OF SERVICES**

- 3.1. *Sonoma Water's Specified Services:* Sonoma Water shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A. 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:* West Yost shall cooperate with Sonoma Water in the performance of all work hereunder. West Yost shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

<b>Sonoma Water</b>	<b>West Yost</b>
Project Manager: Ryan Pedrotti 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-521-6209 Email: <a href="mailto:Ryan.pedrotti@scwa.ca.gov">Ryan.pedrotti@scwa.ca.gov</a>	Contact: Andy Rodgers 2235 Mercury Way, Suite 105 Santa Rosa, CA 95407 Phone: 707-508-3662 Email: <a href="mailto:arodgers@westyost.com">arodgers@westyost.com</a>
<b>Remit payments to:</b>	<b>Remit invoices to:</b>
Justin Adalio Same address as above	<a href="mailto:Accounting-Invoicing@westyost.com">Accounting-Invoicing@westyost.com</a>

4. **PAYMENT**

- 4.1. *Total Costs:* Total costs under this Agreement shall not exceed \$30,000.
- 4.2. *Method of Payment:* Sonoma Water shall be paid current weighted labor rates, including overhead, for Sonoma Water staff performing work under this Agreement plus actual costs of applicable materials. Weighted labor rates as of January 13, 2020, are listed in Exhibit B (Sample Rates and Expenses). Rates are subject to change.
- 4.3. *Invoices:* Sonoma Water shall submit its bills in arrears on a quarterly basis, based on work completed for the period, in a form approved by West Yost. The bills shall show or include:
- Sonoma Water name
  - Name of Agreement
  - Project Numbers: RRWA Task C.3.A, W0458A002, W0460A002, W0462A002
  - Task performed with an itemized description of services rendered by date
  - Summary of work performed by subconsultants, as described in Paragraph 11.3
  - Time spent in 1/10th hour increments

- g. Hourly rate or rates of the persons performing the task
- 4.4. *Timing of Payments:* Payments shall be made within 90 calendar days after Sonoma Water's submittal of each invoice to West Yost.

## 5. **TERM OF AGREEMENT AND COMMENCEMENT OF WORK**

- 5.1. *Term of Agreement:*
  - a. This Agreement shall expire on June 30, 2021, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
  - b. The parties shall have two options to extend this Agreement for a period of one year each. Parties shall agree in writing for each extension.
- 5.2. *Commencement of Work:* Sonoma Water is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

## 6. **TERMINATION**

- 6.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, either party shall have the right, in its sole discretion, to terminate this Agreement by giving 5 calendar days written notice to the other party.
- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should either party fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, a party may give the other party written notice of such failure to perform the obligations hereunder. The party receiving notice shall have a reasonable time to cure any defect. If the defect is not cured within a reasonable time, the party providing notice of the defect may terminate this Agreement by providing written notice to the other party stating the reason for termination.
- 6.4. *Payment Upon Termination:* Upon termination of this Agreement, Sonoma Water shall be entitled to receive as full payment for all services rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services rendered hereunder by Sonoma Water 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 Sonoma Water 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.

## **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.

## **8. INSURANCE**

- 8.1. Sonoma Water shall procure and maintain the following insurance policies, each of which shall provide primary coverage with respect to work performed under this Agreement. West Yost’s insurance shall be excess and noncontributory.
- a. Commercial General Liability. Insurance including premises/operations, products/completed operations, blanket contractual, and broad-form property damage liability coverages. The combined single limit for bodily injury and property damage shall not be less than \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - b. Automobile Bodily Injury and Property Damage Liability. Insurance covering owned, non-owned, rented, and leased cars. The limit shall not be less than \$1,000,000 per occurrence.
  - c. Workers’ Compensation and Employer’s Liability. Insurance as prescribed by applicable law, including liability under the Longshoreman’s and Harbor Workers’ Act and the Jones Act, if applicable. The employer’s liability limit shall not be less than \$1,000,000 per accident.
  - d. Professional Liability Insurance. Insurance covering losses resulting from errors or omissions of Sonoma Water. The limit of liability shall not be less than \$1,000,000 per claim.
  - e. The policies for Items a. and b. above shall be endorsed to name West Yost as an additional insured. Policies written on a claims-made form (along with

required endorsements) shall be kept in force during and for three (3) years following work done under this Agreement.

- 8.2. Sonoma Water shall submit certificates for each of the above insurances to West Yost before commencing work.

## **9. REPRESENTATIONS OF SONOMA WATER**

- 9.1. *Status of Sonoma Water:* The parties intend that Sonoma Water, 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. Sonoma Water is not to be considered an agent or employee of West Yost and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits West Yost provides its employees.
- 9.2. *No Suspension or Debarment:* Sonoma Water warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Sonoma Water also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 9.3. *Taxes:* Sonoma Water 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. Sonoma Water agrees to indemnify and hold West Yost 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 Sonoma Water's failure to pay, when due, all such taxes and obligations. In case West Yost is audited for compliance regarding any withholding or other applicable taxes, Sonoma Water agrees to furnish West Yost with proof of payment of taxes on these earnings.
- 9.4. *Records Maintenance:* Sonoma Water 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 West Yost for inspection at any reasonable time. Sonoma Water shall maintain such records for a period of four (4) years following completion of work hereunder.

## **10. DEMAND FOR ASSURANCE**

- 10.1. 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) calendar 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 10 limits Sonoma Water's or West Yost's right to terminate this Agreement pursuant to Article 6 (Termination).

## **11. ASSIGNMENT AND DELEGATION**

- 11.1. *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.
- 11.2. *Subcontracts:* Notwithstanding the foregoing, Sonoma Water 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.
- 11.3. *Summary of Subconsultants' Work:* Sonoma Water shall provide West Yost 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.

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

- 12.1. *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.
- 12.2. *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 12.

### **13. MISCELLANEOUS PROVISIONS**

- 13.1. *No Waiver of Breach:* The waiver by Sonoma Water or West Yost 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.
- 13.2. *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. Sonoma Water and West Yost 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. Sonoma Water and West Yost acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 13.3. *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.
- 13.4. *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.
- 13.5. *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.
- 13.6. *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.
- 13.7. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to

Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. *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.

13.9. *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 funds:

TW 19/20-071

By: \_\_\_\_\_  
Sonoma County Water Agency  
Division Manager - Administrative  
Services

Approved as to form:

By: \_\_\_\_\_  
Adam Brand, Deputy County Counsel

**Sonoma County Water Agency**

**West Yost Associates, a California corporation**

By: \_\_\_\_\_  
Grant Davis  
General Manager  
Authorized per Sonoma County Water  
Agency's Board of Directors Action on  
June 9, 2020

By: \_\_\_\_\_  
\_\_\_\_\_  
(Please print name here)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit A

## Scope of Work

### 1. **TASKS**

- 1.1. Task 1: Identify and Contact Schools
  - a. Identify schools within the cities of Cloverdale and Ukiah, and the County of Sonoma (unincorporated areas) in which stormwater education services can be provided.
  - b. Contact schools in each jurisdiction to provide Stormwater Education Program information and solicit participation.
- 1.2. Task 2: Provide the following stormwater education programs to participating schools:
  - a. ZunZun musical assembly program
  - b. Third grade classroom lesson on climate change and storm drain pollution
  - c. Third grade poster contest on storm drain pollution
  - d. Fifth grade classroom visits and field trips (transportation costs included)
- 1.3. Task 3: Coordinate with RRWA staff on program implementation.
- 1.4. Task 4: Provide summary of programs conducted for each service jurisdiction, including number of classrooms visited and number of students in attendance.

Deliverable	Due Date
Summary Report	June 30, 2021

## Exhibit B

### Sample Rates and Expenses

Title	Hourly Rate*
Water Education Program Manager: (PM)	\$205.13
Water Education Senior Program Specialist: (SR PS)	\$160.30
Water Education Program Specialist: (PS)	\$158.30
Water Education Resource Technician: (TECH)	\$51.85
Expenses	Cost
Transportation	\$600 per field trip
Water bottles	\$3.00 per unit
Journals	\$1.00 per unit

\*Rates as of January 13, 2020. Rates subject to change.