

## **AGREEMENT BETWEEN SONOMA COUNTY WATER AGENCY AND THE TOWN OF WINDSOR/WINDSOR WATER DISTRICT REGARDING THE TRANSFER AND USE OF RECYCLED WATER**

The Sonoma County Water Agency (SONOMA WATER) and the Town of Windsor/Windsor Water District (TOWN) own and operate separate municipal wastewater collection, treatment, and reuse systems that serve neighboring service areas. This Agreement will allow for the coordinated operation of these systems for the purposes of increasing operating efficiencies, reducing operational costs, increasing beneficial use of recycled water, and decreasing discharges of recycled water to Mark West Creek through a sharing of recycled water facilities and coordinated operations, for an initial term of five years with subsequent renewal terms provided for herein.

### **RECITALS**

Since 1988, TOWN and SONOMA WATER and their respective predecessors have transferred, stored and disposed of treated wastewater on a mutual-aid basis, in accordance with the *Agreement Regarding the Ownership, Construction, Operation, and Maintenance of Wastewater Facilities to Permit the Transfer, Storage, and Disposal of Treated Wastewater on a Mutual-Aid Basis*;

Transfers between these systems are recognized and regulated by the North Coast Regional Water Quality Control Board, including in Order R1-2020-0010;

The wastewater treatment facilities owned and operated by both TOWN and SONOMA WATER are capable of treating wastewater to tertiary treated recycled water standards;

TOWN and SONOMA WATER endeavor to increase operating efficiencies, reduce operational costs, increase beneficial use of recycled water, and decrease discharges of recycled water to Mark West Creek through a sharing of recycled water facilities and coordinated operations;

TOWN and SONOMA WATER are willing to cooperatively manage recycled water in order to empty the TOWN's and SONOMA WATER's reservoirs at the beginning of each Water Year, and to maximize the beneficial reuse of recycled water;

SONOMA WATER is willing to provide recycled water storage space to TOWN as is available in SONOMA WATER's ALWSZ reservoirs under the terms and conditions set forth in this Agreement;

TOWN is willing to accept recycled water from SONOMA WATER and provide it to TOWN's recycled water users, under the terms and conditions set forth in this Agreement, when irrigation capacity is available; and

By mutual agreement during each Water Year, TOWN and SONOMA WATER will proportionally share in the cost of irrigating TOWN-owned land with recycled water produced by TOWN and SONOMA WATER in order to empty the SONOMA WATER reservoirs at the end of each Water Year.

1. **RECITALS**

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

2. **DEFINITIONS**

- A. "SONOMA WATER" means the Sonoma County Water Sonoma Water, on behalf of its Airport-Larkfield-Wikiup Sanitation Zone.
- B. "ALWSZ" means SONOMA WATER's Airport-Larkfield-Wikiup Sanitation Zone.
- C. "ALWSZ Facilities" means the ALWSZ wastewater collection, treatment, storage, and recycling facilities owned and operated by SONOMA WATER.
- D. "ALWSZ Reservoirs" means the ALWSZ recycled water storage reservoirs owned and operated by the SONOMA WATER.
- E. "TOWN's Irrigation System" means the TOWN's recycled water distribution system that provides water to TOWN's recycled water users.
- F. TOWN Owned Irrigation Properties means properties owned by the TOWN that are used for irrigation if TOWN's Irrigation System does not have the capacity for a given year to use all of the recycled water that must be disposed in a given water year.
- G. "Reservation" means the capacity within the ALWSZ Reservoirs that has been reserved exclusively for storage of the TOWN's Tertiary-Treated Recycled Water.
- H. "Tertiary-Treated Recycled Water" means wastewater that has been treated to disinfected tertiary recycled water standards as set forth in Title 22, Division 4, Chapter 3 of the California Code of Regulations, as may be amended from time to time.
- I. "TOWN" means the Town of Windsor and the Windsor Water District.
- J. "Undisinfected Secondary-Treated Recycled Water" means wastewater that has been treated to undisinfected secondary recycled water standards as set forth in Title 22, Division 4, Chapter 3 of the California Code of Regulations, as may be amended from time to time.
- K. "Town Facilities" means the wastewater collection, treatment, storage, and recycling facilities operated by TOWN.
- L. "Water Year" means the one-year period from October 1 of the preceding year through September 30 of the designated Water Year.

3. **TERM**

- A. This Agreement shall be in effect for an initial term of five (5) years effective upon the date of execution by both parties, and shall automatically renew for subsequent one-year periods, unless terminated sooner pursuant to Section 11 below.

4. **STORAGE AND USE OF RECYCLED WATER**

A. Use of Facilities

- 1. Subject to the provisions of this Agreement, SONOMA WATER will provide recycled water storage space to TOWN as is available in SONOMA WATER's ALWSZ reservoirs for the TOWN's use.

2. Subject to the provisions of this Agreement, TOWN is willing to accept recycled water from SONOMA WATER and provide it to TOWN's recycled water users, under the terms and conditions set forth in this Agreement, when there is available irrigation capacity.
3. SONOMA WATER will return and TOWN will accept all of TOWN's recycled water stored in ALWSZ reservoirs before the end of each Water Year.
4. SONOMA WATER shall, at its sole discretion, return TOWN's recycled water stored in ALWSZ reservoirs as necessary to prevent overtopping of the ALWSZ reservoirs, and TOWN will accept all such recycled water.
5. TOWN and SONOMA WATER will coordinate to provide staff resources to irrigate TOWN-owned irrigation properties with recycled water produced by TOWN and SONOMA WATER if such irrigation is necessary to empty SONOMA WATER reservoirs at the end of each Water Year. For the purposes of calculating shared irrigation costs as described in Section 5, TOWN recycled water stored in ALWSZ reservoirs that is subsequently irrigated in TOWN's irrigation system shall count as recycled water contributed by TOWN.

B. Water quality:

1. All recycled water transferred between TOWN and ALWSZ shall be Tertiary-Treated Recycled Water.
  - a) TOWN and SONOMA WATER will notify each other by telephone, followed by a confirmatory notice in writing, if either party discovers that any recycled water transferred does not meet standards for Tertiary-Treated Recycled Water.

C. Coordination:

1. TOWN and SONOMA WATER representatives will meet at the beginning of each Water Year to discuss operational goals and current storage capacity.
2. The timing and rate of transfers pursuant to this Agreement, either from the TOWN to ALWSZ or from ALWSZ to the TOWN, shall be subject to a Recycled Water Operations and Management (Plan). This Plan can be amended as needed with the written consent of SONOMA WATER's General Manager and the TOWN's Public Works Director.
3. When a notifying party cannot receive or deliver the transferring water due to operational problems, an act of vandalism, an act of terrorism, an act of war, or an act of god, TOWN and SONOMA WATER shall cease transfers to or from ALWSZ as soon as possible but in no event greater than three hours of the time either party is notified by the other party, through a notice by phone to the 24 hour contact numbers specified herein. Notices to cease transfers under this Agreement may be made by telephone to each party's 24 hour contact person, designated in Paragraph 7.B. The verbal notices shall be followed by written confirmations.

D. Facilities:

1. Use of ALWSZ's storage shall not be specific to a particular reservoir, but shall be for capacity in the ALWSZ system as a whole, with SONOMA WATER solely determining the distribution of water within its system.

2. All transfers shall initially occur via the existing intertie facilities near Skylane Boulevard and/or the Starr Road Reclamation Intertie. Transfers may occur via additional intertie facilities, as constructed.

E. Record-Keeping

1. SONOMA WATER and TOWN shall maintain records of the amounts of partially treated and recycled water transferred between the TOWN and SONOMA WATER.
2. If the TOWN and SONOMA WATER encounters a dispute in the transfer records, both parties shall work together to negotiate a fair resolution.

**5. COMPENSATION**

- A. The TOWN and SONOMA WATER shall each bear their respective costs to accomplish transfers pursuant to the Agreement, with the exception of shared costs for irrigating TOWN-owned properties.
- B. SONOMA WATER and TOWN shall share the cost of irrigating TOWN-owned irrigation properties, provided however that no such irrigation shall occur without the written consent of SONOMA WATER's General Manager and the TOWN's Public Works Director for each Water Year. The total costs for such irrigation, whether for TOWN or for SONOMA WATER, will be shared in proportion to each entity's volume of recycled water contributed to the TOWN's Irrigation System.
- C. SONOMA WATER and TOWN shall annually track and report to each other their respective staff, equipment, and material costs for irrigating the TOWN's irrigation properties. If at the end of the Water Year SONOMA WATER or TOWN has over-contributed to its share of the proportional irrigation costs for that Water Year, the over-contributing party shall prepare an invoice to the under-contributing party for payment of the over-contributed costs. Alternatively, with the mutual written consent of both parties, an over-contributing party could receive a credit for these costs that can be applied to future years or invoiced at a later date. under-contributing party shall pay the costs as presented in the invoice. Example Calculation of Shared Irrigation Costs: If the total volume of recycled water (example: 500 million gallons (MG)) provided by both TOWN (example: 200 MG) and SONOMA WATER (example: 300 MG) to TOWN's Irrigation System were to exceed the reuse capacity of this system for a given year (example: 400 MG), the excess amount (example: 100 MG) would be irrigated on TOWN-owned irrigation properties. The cost of irrigating this excess recycled water (example: \$150,000) would be shared between the TOWN (example: 200 MG/500 MG or 40%) and SONOMA WATER (example: 300 MG/500 MG or 60%). If all of the costs (\$150,000) of irrigating this excess recycled water were born by SONOMA WATER for this example, SONOMA WATER would invoice TOWN for TOWN's share of these costs (40% of \$150,000 = \$60,000) at the end of the Water Year.

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

- A. Method of Delivery: All notices, invoices, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as specified in Paragraph 7.A.

- B. Receipt: When a notice, invoices, or payment is given by a generally recognized overnight courier service, the notice, invoice, or payment shall be deemed received on the next business day. When a copy of a notice, invoice, 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, invoice, 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, invoices, 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.

**7. METHOD AND PLACE OF GIVING NOTICE**

- A. Except as provided in Section B below, all notices shall be made in writing and may be given by personal delivery or by first class mail. Notices sent by mail shall be addressed as follows:

SONOMA WATER:      Attention: Sonoma Water Operation Coordinator –  
Airport/Larkfield/Wikiup Sanitation Zone  
Sonoma County Water Sonoma Water  
PO Box 11628  
Santa Rosa, CA 95406

TOWN :                      Attention: Public Works Director  
Town of Windsor  
PO Box 100  
Windsor, CA 95492

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. 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 paragraph.

- B. 24-Hour Contact Information

SONOMA WATER:      Sonoma County Water Sonoma Water  
Operation and Maintenance Center  
Telephone: 707-523-1070

TOWN:                      Attention: \_\_\_\_\_  
Public Works Department  
Mon-Thurs, 7:00 am to 5:50 pm: 707- 838-5343  
All Other Times: 707- 327-7099

**8. INDEMNIFICATION**

- A. If any recycled water transferred by either party fails to meet Tertiary-Treated Recycled Water standards, then:

1. TOWN shall indemnify and defend SONOMA WATER from and against any claim against the SONOMA WATER caused by or arising out of the failure of recycled water transferred by TOWN to meet such tertiary standards, and shall reimburse the SONOMA WATER for all out-of-pocket costs incurred by SONOMA WATER as a result of such failure.
  2. SONOMA WATER shall indemnify and defend TOWN from and against any claim against the TOWN caused by or arising out of the failure of recycled water transferred by SONOMA WATER to meet such tertiary standards, and shall reimburse the TOWN for all out-of-pocket costs incurred by TOWN as a result of such failure.
- B. SONOMA WATER shall indemnify, hold harmless, defend and release TOWN, its agents and employees from any and all liability, actions, claims, damages, costs or expenses, including attorney's fees and costs and expenses of suit that may be asserted by any person arising out of or in connection with the action or inaction of SONOMA WATER in the course of the performance of this agreement where SONOMA WATER is actively negligent and TOWN is passively negligent. TOWN shall indemnify, hold harmless, defend and release SONOMA WATER, its agents and employees from any and all liability, actions, claims, damages, costs or expenses, including attorney's fees and costs and expenses of suit that may be asserted by any person arising out of or in connection with the action or inaction of TOWN in the course of the performance of this agreement where TOWN is actively negligent and SONOMA WATER is passively negligent.
- C. The indemnification obligations set forth in this Agreement shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**9. COOPERATION TO INCREASE URBAN REUSE OF RECYCLED WATER**

- A. The parties agree to work together to increase opportunities for urban reuse of Recycled Water.

**10. APPLICABLE LAWS AND REGULATIONS**

- A. SONOMA WATER in its operation of ALWSZ Facilities shall comply with all applicable laws pertaining to the treatment, storage and disposal of wastewater, including the regulations contained in the California Code of Regulations, Title 22. SONOMA WATER shall comply with requirements of the ALWSZ Waste Discharge Requirements for notification of the Regional Water Quality Control Board of transfers made pursuant this Agreement.
- B. TOWN in its operation of TOWN Facilities shall comply with all applicable laws pertaining to the treatment, storage and disposal of wastewater, including the regulations contained in the California Code of Regulations, Title 22. TOWN shall comply with requirements of its Waste Discharge Requirements for notification of the Regional Water Quality Control Board of transfers made pursuant this Agreement, and as it otherwise may apply to the transfers contemplated by this Agreement.

**11. TERMINATION**

- A. This Agreement may be terminated as follows:

1. Prior to any pending renewal, either party may notify the other in writing of its intention not to renew, no less than nine months in advance of a pending renewal date, or
  2. The Agreement may be terminated, amended, or superseded by mutual agreement.
- B. 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, the other party may terminate this Agreement by giving the other party sixty days' written notice of such termination, stating the reason for termination.
- C. Notwithstanding any other provision of this Agreement, in the event of unforeseen circumstances that make performance under this Agreement impracticable, including, but not limited to, earthquake, flood, or other natural disaster; major operational problems; an act of God, terrorism, war, or insurrection; or unforeseen changes in regulatory requirements, either party may terminate this Agreement by giving the other party sixty days' written notice of such termination, stating the reason for termination.

## **12. MERGER**

- A. 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.

## **13. MEDIATION OF DISPUTES PRIOR TO ARBITRATION**

- A. If a dispute arises out of or relates to this Agreement, or an alleged breach of it, and if the dispute cannot be settled through negotiation, then before resorting to arbitration, TOWN and SONOMA WATER agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, with the following exception to those Rules:
1. The mediation shall be conducted at Santa Rosa, California.
  2. Unless otherwise agreed in writing by all parties participating in the mediation, the mediation shall be concluded no later than ninety (90) days after initiation of the mediation, and any party may elect at that time to initiate arbitration pursuant to Section 14 (Arbitration) of this Agreement.
  3. Not later than thirty (30) calendar days after initiation of mediation, the parties shall exchange all relevant non-privileged documents.
  4. Any mediation proceeding shall be confidential and shall not be admissible in a subsequent proceeding. If any party commences an arbitration or court action based on a dispute or claim to which this section applies without first attempting to resolve the matter through mediation, then the other party may apply to such arbitrator or judge for an order staying the arbitration or court action pending mediation.

## **14. ARBITRATION**

- A. Any claims, disputes, or controversies arising out of or relating to this Agreement, or breach thereof, if not previously resolved by negotiation or mediation pursuant to Section 13

(Mediation of Disputes Prior to Arbitration) of this Agreement, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules (except as modified by A and B immediately below) and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, provided, however, that:

1. All arbitration proceedings shall take place in Santa Rosa, California.
2. In order to expedite matters and limit costs consistent with the purposes of arbitration, the number of depositions and other discovery shall be appropriate to the amount in dispute and the complexity of the issues, and the arbitrator shall have express authority to limit the number of depositions and other discovery if the parties cannot agree. Written interrogatories will not be permitted. With these exceptions Commercial Arbitration Rules regarding discovery shall apply.

**15. AMENDMENT**

- A. This Agreement can be amended based on the mutual written consent of TOWN and SONOMA WATER.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

Reviewed as to substance by Sonoma Water:

\_\_\_\_\_  
Department Head

Reviewed as to funds by Sonoma Water:

\_\_\_\_\_  
Division Manager - Administrative Services

Reviewed as to form by County Counsel:

\_\_\_\_\_  
County Counsel

Reviewed as to form by Town Attorney:

\_\_\_\_\_  
Town Attorney

Attest:

\_\_\_\_\_  
County Clerk and ex-officio Clerk of the Board  
of Directors

Attest:

\_\_\_\_\_  
Town Clerk

**SONOMA COUNTY WATER SONOMA  
WATER**

By: \_\_\_\_\_

\_\_\_\_\_  
Chair, Board of Directors

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

**TOWN OF WINDSOR**

By: \_\_\_\_\_

\_\_\_\_\_  
Town Manager

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

DRAFT