

DRAFT First Amended and Restated Agreement for Funding of the Green Business Program

This first amended agreement ("First 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 **County of Sonoma**, through its General Services Department ("County"). 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. Sonoma Water and County mutually desire to educate and assist the private sector business community with environmental issues including, but not limited to, water quality and efficiency of use within the commercial, industrial, and institutional (CII) sector of the Sonoma Water's service area.
- B. County has existing relationships with local businesses and expertise in identifying and researching efficiency of water use activities and opportunities for businesses that will assist Sonoma Water in accomplishing its water quality, conservation, and educational goals.
- C. Sonoma Water desires to fund County to provide support to assist area businesses in adopting water-efficient, cost-effective practices through contacting business owners and arranging for water audits.
- D. The Sonoma Green Business Program (Program) began through the Association of Bay Area Governments (ABAG) in 1996. The Sonoma Green Business Program works with the following sectors: office and retail, restaurants, small manufacturers, wineries, home offices, printers, hotels, automotive (body and shop), janitorial cleaning services, property managers, car washes, grocery stores, dentists and schools.
- E. The Program certifies local businesses that adopt water-efficient, cost effective practices and other sustainability measures, including conserving energy, preventing pollution and minimizing waste.
- F. Sonoma Water and County first entered into this Agreement on March 18, 2019, in the amount of \$60,000.
- G. This First Amended Agreement adds \$60,000 to the total amount of the Agreement and one year to the term for a new not-to-exceed amount of \$120,000 and new term end date of June 30, 2022, to continue support for Program operation.
- H. This First Amended Agreement supersedes all previous agreements 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 and are incorporated herein.

2. COORDINATION

2.1. Cooperation with Sonoma Water. County shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

Sonoma Water	County
Project Manager: Kris Loomis 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: (707) 524-1165 Email: Kris.Loomis@scwa.ca.gov	Contact: Jane Elias 2300 County Center Drive, Suite A105 Santa Rosa, CA 95403-9019 Phone: (707) 565-6483 Email: Jane.Elias@sonoma-county.org
Remit invoices to: Accounts Payable Same address as above Email: ap_agreements@scwa.ca.gov	Remit payments to: Same address as above

3. COUNTY'S RESPONSIBILITIES

County shall complete the following:

3.1. General. County agrees to perform all work in accordance with the requirements of applicable federal, state, and local laws.

3.2. Description. County is responsible for the following tasks:

a. *Administration*:

- i. Administer and maintain the Program.
- ii. Quarterly Reports: Provide the number of certified or recertified businesses, examples of marketing and outreach, and a copy of audit forms (or the data from these forms in a Microsoft Excel spreadsheet) used during certification or recertification showing the estimated water savings and wastewater reduction.
- iii. Annual Reports: Provide the cumulative water savings and wastewater reduction for all measures for the year for all Sonoma County Green Business participants, the number of certified or recertified businesses, and examples of market and outreach.

b. *Coordination*: Coordinate the Program and its purchases including but not limited to:

- i. Verifying that participants are in compliance with environmental regulations that meet Program standards for saving water, conserving energy, preventing pollution, and minimizing waste.

- ii. Maintaining a database to include applicant, certified, recertified, denied, and revoked businesses.
- iii. Developing and printing program marketing materials including:
 - a) Window decals
 - b) Program checklists and business reports for both certified and denied businesses.
- iv. Publicity, education, and outreach.
- v. Verification that an applicant business has met program standards through permit and compliance confirmation and collection of checklists from relevant audits of the applicant business.
- vi. Annually recognize the businesses that have obtained the Green Business Certification.

3.3. Content Online Accessibility.

- a. *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.
- b. *Standards:* Those 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://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- c. *Certification:* With each final deliverable intended for public distribution (report, presentations posted to the Internet, public outreach materials), County 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).
- d. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, County shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. County 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.
- e. *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 County. 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 County in writing. Upon such notice, County 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:

- i. Cancel any delivery or task order;
 - ii. Terminate this Agreement pursuant to the provisions of Paragraph 5.2; and/or
 - iii. In the case of custom Electronic and Information Technology (EIT) developed by County for Sonoma Water, Sonoma Water may have any necessary changes or repairs performed by itself or by another contractor. In such event, County shall be liable for all expenses incurred by Sonoma Water in connection with such changes or repairs.
- f. *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.

3.4. Mutual Indemnification. 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.

3.5. Invoices. County shall bill Sonoma Water upon execution of this Agreement with an invoice that is clearly marked with "County of Sonoma, First Amended and Restated Agreement for Funding of the Green Business Program, Project-Activity Code T0315P006."

- 3.6. Refund of Unused Funds. Following completion of work, County shall submit receipts and invoices to verify actual costs. If total of actual costs of authorized expenses is less than the total amount provided under this Agreement, County shall refund the difference to Sonoma Water within 30 calendar days of completion of work.
- 3.7. Refund Upon Cancellation. If County determines Program will not occur, County shall immediately notify Sonoma Water in writing. In such case, County shall refund any funding provided under this Agreement by Sonoma Water within 30 calendar days of said determination.

4. SONOMA WATER'S RESPONSIBILITIES

- 4.1. Total. Sonoma Water's maximum obligation to County under this Agreement shall not exceed **\$120,000.**

- 4.2. Funding. Availability of Funding in Subsequent Fiscal Years.

- a. 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. Amount of funding planned for appropriation for this Agreement is as follows:

<i>Fiscal Year</i>	<i>Planned Appropriation</i>
2018/2019	\$30,000
2019/2020	\$30,000
2020/2021	\$30,000
2021/2022	\$30,000

- b. 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 County to reflect the reduced amount

- 4.3. Payments.

- a. *2018/2019 Payment:* Upon execution of Agreement and receipt of an invoice thereof, Sonoma Water will deposit with County \$30,000.
- b. *2019/2020 Payment:* Upon receipt of invoice dated July 1, 2019, or later, Sonoma Water will deposit with County \$30,000.
- c. *2020/2021 Payment:* Upon receipt of invoice dated July 1, 2020, or later, Sonoma Water will deposit with County \$30,000.
- d. *2021/2022 Payment:* Upon receipt of invoice dated July 1, 2021, or later, Sonoma Water will deposit with County \$30,000.

- 4.4. Items to be Provided. Sonoma Water logo or other identifying material, as requested by County.

4.5. Other Requirements/Responsibilities.

- a. *Coordination:* Sonoma Water shall coordinate with County's staff to attend meetings.
- b. *Collaborate with County:* Share progress of work detailed in this Agreement to allow collaboration between partners.
- c. *Green Business Program Site Assessments:* If County requests, Sonoma Water will perform a water audit of the applicant business within 30 days of audit request. Sonoma Water will coordinate with the applicant business directly to schedule a convenient water audit time and date.
 - i. During the audit of the business, Sonoma Water will complete the water audit as per internal Bay Area Green Business Program Business requirements, as well as the "Water Conservation" portion of the Bay Area Green Business Program Checklist (Checklist).
 - ii. Upon completion of the audit, Sonoma Water will return the completed program checklist to County.
 - iii. If a business fails a component of the Sonoma Green Business Program and is not recognized, or becomes derecognized and requires recertification, there will be no requirement by Sonoma Water for an additional water audit or additional checklist completion.
- d. *Site Assessment Training:* If requested by County, Sonoma Water will offer training or job shadow to the Green Business staff that need to conduct a site visit to determine if water efficiency standards are met
- e. *Newsletter and Public Relations Content:* If requested, Sonoma Water will work with County's staff to develop newsletter and public relations content.

5. **TERM OF AGREEMENT**

- 5.1. The term of this Agreement shall be from March 18, 2019 ("Effective Date") to June 30, 2022, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- 5.2. The parties shall have two options to extend this Agreement for a period of one year each by providing written notice to the other party thirty days in advance of the expiration date noted in this Article and of the first extension option.

6. **TERMINATION**

- 6.1. At any time and without cause, Sonoma Water has the right, in its sole discretion, to terminate this Agreement by giving five calendar days' written notice to County. In the event of such termination, Sonoma Water will pay County for services satisfactorily rendered to the date of termination. In addition, should County 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 County written notice of such termination, stating the

reason for termination. In the event of such termination, Sonoma Water will pay County for services satisfactorily rendered to the date of termination. However, Sonoma Water will deduct from such amount the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by County. Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.

7. ADDITIONAL REQUIREMENTS

- 7.1. Bottled Water. In accordance with Sonoma County Water Agency 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.
- 7.2. Authority to Amend Agreement. Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel.
- 7.3. 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.
- 7.4. 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. County 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. County and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 7.5. 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.
- 7.6. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any

action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

- 7.7. 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.
- 7.8. 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. 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.
- 7.9. 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.
- 7.10. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- 7.11. *Digital Signature(s)*: If digital signatures are used to execute this Agreement, the digital signatures shall comply with Government Code section 16.5. By using digital signature(s), both parties warrant and represent that they intend the digital signatures to have the same force and effect as the use of manual signatures.

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

TW 18/19-043A

Reviewed as to funds:

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

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Sonoma County Water Agency

County of Sonoma

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water
Agency's Board of Directors Action on
March 16, 2021

By: _____
Caroline Judy
Director, General Services Department
Authorized per County of Sonoma's Board
of Supervisors Action on March 16, 2021

Date: _____

Date: _____