

Cooperative Agreement to Provide Funding for Shared Temporary Deployment of Precipitation Forecasting System

This Cooperative Agreement (“Agreement”), dated _____ (the “Effective Date”), is by and among **Sonoma County Water Agency**, a body corporate and politic of the State of California (“Sonoma Water”), **East Bay Municipal Utility District, Alameda County Flood Control & Water Conservation District, Alameda County Water District, East Bay Dischargers Authority, and Contra Costa County Flood Control and Water Conservation District** (each a “Participant” and collectively “Participants”).

RECITALS

- A. The San Francisco Bay Area Advanced Quantitative Precipitation Information System Project (“AQPI”) is a regional effort that will install improved weather radar and other observing systems and develop a suite of numerical forecast modeling systems covering the multijurisdictional San Francisco Bay Area.
- B. The AQPI will provide accurate and timely information that will be of significant value to a variety of decision makers, allowing them to mitigate flood risks; better manage reservoirs to secure and preserve water supplies; minimize water quality impacts to San Francisco Bay from wastewater overflows; anticipate air, sea and land transportation challenges; and have improved lead-time on coastal and Bay Area inundation from severe storms, especially high-moisture laden atmospheric rivers.
- C. The AQPI is a collaboration of federal, State, and local government agencies. Project partners include the National Ocean and Atmospheric Administration, Colorado State University’s Cooperative Institute for Research in the Atmosphere, United States Geological Survey - Pacific Coast and Marine Science Center, Center for Western Weather and Water Extremes at Scripps Institute of Oceanography, as well as, local water, wastewater, and flood control entities in the San Francisco Bay Area, including the San Francisco Public Utilities Commission and Santa Clara Valley Water District.
- D. The AQPI is financed under State of California, Department of Water Resources Grant Agreement No. 4600011485 (the “Grant”) that awarded \$19.84 million in grant funds from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, administered by the State of California, Department of Water Resources.
- E. The Grant covers the majority of costs associated with the AQPI, but local cost share is required for several siting and operational tasks.
- F. Sonoma Water, acting as grantee and lead administrative agency, will manage administration for the AQPI including contracting with the Department of Water Resources and project partners.
- G. Sonoma Water and the Participants are interested in precipitation forecasting issues and the relationship between those issues and their effect on government operations.
- H. Sonoma Water and the Participants wish for Sonoma Water to retain the services of a consultant or consultants (“Consultant”) with expertise in deploying a precipitation forecasting system such as an X-Band Radar system at a site in the East Bay. Sonoma Water will contract with the Consultant for the design of the precipitation forecasting system. Sonoma Water also will contract with a contractor (“Contractor”) to install and construct the precipitation forecasting system.
- I. Sonoma Water and the Participants have identified what appears to be a suitable site with existing infrastructure, which is currently owned by East Bay Municipal Utility District and leased and operated by American Tower, L.P. (as described on Exhibit 1 attached hereto, the

“American Tower Site”).

- J. Participants have requested that Sonoma Water enter into a sublease agreement with American Tower, L.P. (“AMT”), on their mutual behalf to allow for the deployment and operations of the precipitation forecasting system at the American Tower Site. Participants are willing to share in the costs associated with deploying the precipitation forecasting system at the American Tower Site. Sonoma Water is willing to enter into the desired agreements, administer the agreements, and provide overall project management and coordination under the terms described below.
- K. The precipitation forecasting system referenced in this Agreement is the property of Sonoma Water pursuant to its agreement with the State Department of Water Resources, and is being loaned to Participants for the purpose of determining whether the American Tower Site is suitable for the permanent installation of a precipitation forecasting system, i.e., that the precipitation forecasting system does not cause interference with other equipment already located at the American Tower Site and that the site provides the coverage desired by Participants.
- L. Should the American Tower Site ultimately be deemed suitable for a permanent precipitation forecasting system, a new, long-term agreement will be entered into among the Participants to cover the installation of a new, permanent X-Band Radar System at the site, and to cover long-term maintenance and operational costs.

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

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. COMMUNICATION/DESIGNATED REPRESENTATIVES

- 2.1. The designated representatives below shall, upon execution of this Agreement, have authority to grant discretionary approvals identified in this Agreement. Except as otherwise specifically provided in this Agreement, any notice, submittal, or communication required or permitted to be served on a Participant, may be delivered personally, or be sent by United States first class mail, postage prepaid addressed as indicated below:

Sonoma Water	East Bay Municipal Utility District
Project Manager: Jake Spaulding 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-524-8373 Email: Jake.Spaulding@scwa.ca.gov Designated Representative: Jake Spaulding	Project Manager: David Briggs 375 11th Street Oakland, CA 94607 Phone: 510-287-5046 Email: david.briggs@ebmud.com Designated Representative: David Briggs

Alameda County Flood Control District	Alameda County Water District
Project Manager: Hank Ackerman 399 Elmhurst Street Hayward, CA 94544-1395 Phone: 510-670-5553 Email: hank@acpwa.org Designated Representative: Daniel Woldesenbet, PhD., P.E.	Project Manager: Leonard Ash 43885-43951 S. Grimmer Boulevard Fremont, CA 94538 Phone: 510-668-4209 Email: Leonard.Ash@acwd.com Designated Representative: Robert Shaver
East Bay Dischargers Authority	Contra Costa County Public Works
Project Manager: Jackie Zipkin 2651 Grant Avenue San Lorenzo, CA 94580 <u>Phone: (510) 278-5910</u> Email: JZipkin@ebda.org Designated Representative: Jackie Zipkin	Project Manager: Mark Boucher 255 Glacier Drive Martinez, CA 94553 <u>Phone: 925-313-2274</u> Email: mark.boucher@pw.CCCounty.us Designated Representative: Brian Balbas

3. **SONOMA WATER RESPONSIBILITIES**

- 3.1. Sonoma Water shall: (i) coordinate the installation of precipitation forecasting equipment; (ii) coordinate and procure data analysis consulting services; (iii) prepare and negotiate a lease agreement with AMT for the purpose of siting and accessing the precipitation forecasting equipment; (iv) provide contract administration, all for an amount not to exceed a total of \$165,000, and (v) ensure that all data from the precipitation forecasting equipment and all analysis of that data is provided to the Participants in a format the Participants are able to use.
- 3.2. Sonoma Water shall act as liaison with AMT and other AQPI project partners, and provide any necessary project management, direction, and coordination. This responsibility includes coordinating necessary meetings, providing status updates, and facilitating the dissemination of information to Participants and their Designated Representatives specified in Section 2.1.
- 3.3. Sonoma Water shall provide Participants with a written accounting of all expenditures made during this Agreement. Should Sonoma Water complete its responsibilities under this Agreement for less than the not-to-exceed amount listed in Paragraph 3.1 above, Sonoma Water shall divide proportionally any remaining funds and disburse them among the Participants based on the percentage each Participant provided to the AQPI project pursuant to this Agreement, unless otherwise agreed by all Participants in writing.
- 3.4. Sonoma Water shall maintain for no less than three years following the termination of this Agreement, complete and accurate records of all associated transactions in compliance with generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting

Standards Board. Such records shall be available to each Participant upon reasonable notice for inspection and analysis during business hours.

3.5. Insurance and Indemnification Requirements:

- a. Sonoma Water shall include the following indemnity language in all the contracts it manages or enters into related to the deployment of the precipitation forecasting system referenced in this Agreement:
 - i. Consultant/Contractor expressly agrees to defend, indemnify, and hold harmless Sonoma Water, East Bay Municipal Utility District, Alameda County Flood Control & Water Conservation District, Alameda County Water District, East Bay Dischargers Authority, Contra Costa County Flood Control and Water Conservation District and their respective Directors, Board and/or Committee Members, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from Consultant/Contractor's, its Directors', Officers', Board and/or Committee Members', agents', employees', and/or sub-contractors' performance under this agreement.
- b. Sonoma Water shall, at a minimum, require that all the contracts it manages or enters into related to the deployment of the precipitation forecasting system referenced in this Agreement contain the following insurance provisions, to the extent they apply to the applicable scope of work:
 - i. Insurance Limits: The insurance shall be the greater of (1) the minimum coverage and limits specified; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. The insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. It shall be explicitly stated that no representations are made that the minimum insurance requirements of the contract are sufficient to cover the obligations of the Named Insured.
 - ii. Workers Compensation Insurance: Workers Compensation Insurance shall be maintained during the life of any contract for all of its employees on the project, and the Named Insured shall require any subconsultant to provide it with evidence of Workers Compensation Insurance. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:
 - a) Coverage A. Statutory Benefit,
 - b) Coverage B. Employer's Liability of not less than:
 - Bodily Injury by accident: \$1,000,000 each accident
 - Bodily Injury by disease: \$1,000,000 each employee
 - Bodily Injury per employee: \$1,000,000 policy limit
 - iii. Waiver of Subrogation: Workers' Compensation, Commercial General and Automobile Liability policies, including any applicable excess and umbrella insurance, must contain a waivers of subrogation endorsement providing that each sub-consultant/sub-contractor and each insurer waive any and all rights of recovery by subrogation, or otherwise, against Sonoma Water, East Bay Municipal Utility District, Alameda County Flood Control & Water Conservation District, Alameda County Water District, East Bay Dischargers

Authority, Contra Costa County Flood Control and Water Conservation District, including, their respective Directors, board and/or committee members, officers, employees, agents, and volunteers. The Named Insured shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to the Named Insured's failure to provide the waivers of subrogation from the insurance carrier.

- iv. Primary and Non-Contributory: All insurance shall be primary and non-contributory and Sonoma Water, East Bay Municipal Utility District, Alameda County Flood Control & Water Conservation District, Alameda County Water District, East Bay Dischargers Authority, Contra Costa County Flood Control and Water Conservation District shall not be required to contribute to it.
- v. Additional Insured Endorsement: There must be endorsements naming Sonoma Water, East Bay Municipal Utility District, Alameda County Flood Control & Water Conservation District, Alameda County Water District, East Bay Dischargers Authority, and Contra Costa County Flood Control and Water Conservation District as Additional Insureds under all applicable Commercial General and Automobile Liability policies.
- vi. Non-Exclusion: All insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by sub-consultants/sub-contractors.
- vii. Premises or Operations: Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all premises and operations in any way related to the contract.
- viii. Work of Subcontractors: Insurance policies and Additional Insured Endorsements shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by sub-consultants/sub-contractors.
- ix. Commercial General Liability Insurance: Commercial General Liability Insurance for bodily injury, personal and advertising injury, and property damage shall cover all premises, contractual liability, products and completed operations, ongoing operations and personal injury and shall not contain any "prior work" coverage limitation or exclusion applicable to any services performed by or on behalf of any Consultant/Contractor performing services on behalf of Sonoma Water, East Bay Municipal Utility District, Alameda County Flood Control & Water Conservation District, Alameda County Water District, East Bay Dischargers Authority, Contra Costa County Flood Control and Water Conservation District without any exclusion for work subcontracted to others in an amount no less than \$2 million per occurrence and \$2 million aggregate.
- x. Automobile Liability Insurance: Business Automobile Liability Insurance covering "All Autos" or "Owned, Non-Owned, and hired autos";
- xi. Professional Liability Insurance: Professional liability insurance with minimum limits of \$2 million per claim.

- 3.6. Sonoma Water shall comply with all relevant laws, grant requirements, and permit requirements, if any, pertinent to any procurements, expenditures of funds, operations, construction, improvement, labor compliance, or other implementation of this Agreement.

- 3.7. Sonoma Water shall consult with Participants on the scope of work or specifications for any contract entered hereunder and shall ensure that any contract hereunder provides sufficient rights, access, or licenses to enable the shared deployment and use of the site.

4. PARTICIPANT RESPONSIBILITIES

- 4.1. Each Participant shall deposit the amounts listed below by February 15, 2020 with Sonoma Water to cover its anticipated pro-rata share of contract costs and expenses as follows:
- a. Participant Type 1: East Bay Municipal Utility District \$45,000
 - b. Participant Type 2: Alameda County Flood Control & Water Conservation District \$40,000
 - c. Participant Type 3: Alameda County Water District \$31,000
 - d. Participant Type 4: East Bay Dischargers Authority \$29,000
 - e. Participant Type 5: Contra Costa County Flood Control and Water Conservation District \$20,000

5. TERMINATION

- 5.1. Any Participant may terminate its participation in this Agreement by giving 60 calendar days advance written notice to each Participant of its intent to terminate its participation in this Agreement. Termination shall not relieve the Participant of its obligation to pay costs and expenses related to any consultant contract or lease entered into by Sonoma Water or otherwise allocated prior to the effective date of the termination. Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager. If Sonoma Water terminates this Agreement, it shall prevent additional expenditures from being made under this Agreement to the degree reasonably practicable and disburse any unexpended funds as provided in Section 3.3.

6. INDEMNIFICATION

- 6.1. Each Participant expressly agrees to defend, indemnify, and hold harmless Sonoma Water and its Directors, Board and/or Committee Members, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from that Participant's, its respective Directors', Board and/or Committee Members', officers', agents', employees', and/or subcontractors' negligence or willful misconduct in performing this Agreement.
- 6.2. Sonoma Water expressly agrees to defend, indemnify, and hold harmless the Participants, their respective, Directors, Board and/or Committee Members, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from Sonoma Water's, its Directors', Officers', Board and/or Committee Members', agents', employees', and/or sub-contractors' negligence or willful misconduct in performing

this Agreement.

7. ADDITIONAL REQUIREMENTS

- 7.1. Term of Agreement: The term of this Agreement begins on the Effective Date and shall expire on December 31, 2021, unless terminated earlier in accordance with the provisions of Article 5 (Termination).
- 7.2. Amendments: Changes to this Agreement may only be made by written amendment, signed by all parties.
- 7.3. 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 shall remain in full force and effect and shall in no way be affected, impaired, or invalidated, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 7.4. Making of Agreement: Participants 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 Agreement's interpretation; the language of the Agreement will not be construed against one Participant in favor of another. Participants 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 the State of California. 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 with respect to the subject matter hereof and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Participant 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. Entire Agreement: This Agreement is the entire Agreement between the parties.
- 7.10. Counterparts: This Agreement may be executed in multiple counterparts and all

counterparts so executed shall constitute a single binding agreement. Original counterpart signature pages may be affixed to an original of this Agreement to create a single, complete agreement. Any counterpart executed by a Participant and/or Sonoma Water and transmitted by electronic transmission shall be treated as an original signature page at the time of receipt. The actual original signature page shall also be mailed to Sonoma Water within ten days of the date of the electronic transmission.

- 7.11. 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.
- 7.12. Time of Essence: Time is and shall be of the essence of this Agreement and every provision.

Signatures appear on the following pages.

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:

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

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Sonoma County Water Agency

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

East Bay Municipal Utility District

By: _____
David Briggs, PhD, PE
Manager of Water Operations

Alameda County Water District

By: _____
Robert Shaver
General Manager

East Bay Dischargers Authority

By: _____
Jacqueline T. Zipkin
General Manager

**Alameda County Flood Control &
Water Conservation District**

By: _____
Daniel Woldesenbet, PhD, PE
Director

**Contra Costa County Flood Control & Water
Conservation District**

By: _____
Brian M. Balbas
Chief Engineer

APPROVED AS TO FORM:
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By: _____
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