

**FUNDING AGREEMENT FOR THE  
CITY OF PETALUMA NORTH BAY WATER QUALITY PARTNERSHIP PROJECT**

This Funding Agreement (“Agreement”), dated \_\_\_\_\_, 2024 (“Effective Date”) is between the **City of Sonoma**, a municipal corporation.

**RECITALS**

- A. The City of Sonoma is the lead applicant on the North Bay Water Quality Partnership Project grant application to the EPA’s San Francisco Bay Water Quality Improvement Fund.
- B. The City of Petaluma was a partner in developing the grant application and has two (2) grant-funded projects in the awarded grant.
- C. The City of Sonoma and the City of Petaluma share the goal of increasing resilience to climate change by promoting native plants, optimizing infrastructure, and implementing a tailored stormwater outreach program in compliance with Phase II MS4 permit requirements.
- D. The City of Sonoma was awarded \$3.1 million under the Environmental Protection Agency’s (“EPA”) San Francisco Bay Water Quality Improvement Fund (“Grant”) to fund projects that implement the restoration of streams, wetlands, and the improvement of water quality, from the Napa River in the North Bay to the salt ponds in the South Bay.
- E. The City of Sonoma and the City of Petaluma do mutually desire to cooperate in the implementation of the City’s projects in the grant award.

**AGREEMENT**

The City of Sonoma and the City of Petaluma agree as follows:

**1. RECITALS**

- A. The above recitals are true and correct.

**2. LIST OF EXHIBITS**

- A. The following exhibits are attached hereto and incorporated herein:

- 1) Exhibit A: Grant Agreement with EPA
- 2) Exhibit B: EPA General Terms & Conditions
- 3) Exhibit C: City of Petaluma Project Scope
- 4) Exhibit D: City of Petaluma Project Budget

**3. DEFINITIONS**

- A. For the purposes of this Agreement the following terms and definitions shall be used:

- 1) Project scope as described in Exhibit A.
- 2) City of Sonoma Representative. City staff assigned to perform grant responsibilities.
- 3) City of Petaluma Representative. City staff assigned to perform City’s responsibilities.

#### 4. COORDINATION

- A. City of Petaluma shall work with the City of Sonoma's Representative. Contact Information:

City of Sonoma	City of Petaluma
City Representative: Mike Berger, Public Works Director, or assigned personnel	City Representative: <u>          </u> or assigned personnel
Phone: 707 933 2230	Phone: 707 778 4314
Email: <a href="mailto:mberger@cityofsonoma.org">mberger@cityofsonoma.org</a>	Email: <a href="mailto:ohart@cityofpetaluma.org">ohart@cityofpetaluma.org</a>
City of Sonoma No. 1 The Plaza Sonoma, CA 9	City of Petaluma 202 N. McDowell Blvd Petaluma, CA 94954

#### 5. CITY OF PETALUMA'S RESPONSIBILITIES

The City of Petaluma shall assist with grant administration as follows:

- A. Communication. Provide regular communication via email or phone with the City of Sonoma Representative on Project progress, invoicing, reporting, and other issues as required.
- B. Quarterly Invoices. Submit timely invoices to the City of Sonoma for inclusion in the Quarterly Grant Invoice before the scheduled deadlines (Exhibit B).
- C. Quarterly Reports. Compile and timely submit progress updates, deliverables, etc. for inclusion in the Quarterly Report before the scheduled deadlines (Exhibit B).
- D. Component Completion Report. Prepare and submit a Component Completion Report to the City of Sonoma within 90 calendar days of completion of the Project as described in Exhibit A.
- E. Grant Compliance. Comply with all stipulations in the grant agreement (Exhibit A), including compliance with procurement, Labor Code, nondiscrimination, record keeping, and acknowledgement provisions.

#### 6. THE CITY OF SONOMA'S RESPONSIBILITIES

The City of Sonoma shall assist with grant administration as follows:

- A. Communication. Provide regular communication via email or phone with City Representative on Project progress, invoicing, reporting, and other issues as required.
- B. Quarterly Invoices. Submit Quarterly Grant Invoices to EPA.
- C. Quarterly Progress Reports. Submit Quarterly Reports to EPA.
- D. Component Completion Report. Submit Component Completion Report to EPA within 90 calendar days of completion of the Project as described in Exhibit A.
- E. Grant Compliance. Comply with all stipulations in the grant agreement (Exhibit A), including compliance with procurement, Labor Code, nondiscrimination, record keeping, and acknowledgement provisions.

#### 7. FUNDING

- A. Grant Funding:

- 1) The City of Sonoma will submit invoices and receive funds from EPA under the Grant based on activities reported by City Paragraph 5 of this Agreement.

- 2) City of Petaluma may receive **\$801,933** from the Grant per Exhibit A. Actual payments to City of Petaluma will be based on the invoices submitted by the City of Petaluma and the amount authorized by EPA for reimbursement.
- B. Grant Distribution. City of Petaluma shall report Project activities and submit invoices quarterly to the City of Sonoma. The City of Sonoma will submit quarterly reports and invoices to the EPA. After the EPA completes their review and authorizes reimbursement, the City of Sonoma will distribute payments to City of Petaluma upon receiving the reimbursement from the EPA.

## **8. MUTUAL INDEMNIFICATION**

- A. City of Petaluma agrees to defend, indemnify, and hold the City of Sonoma, its officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City of Petaluma.
- B. The City of Sonoma agrees to defend, indemnify, and hold City of Petaluma, its officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City of Sonoma.

## **9. TERM OF AGREEMENT**

- A. This agreement shall remain in effect until [DATE], unless terminated earlier in accordance with the provisions of Paragraph 10 of this Agreement.

## **10. TERMINATION OF AGREEMENT**

This Agreement may be terminated by a non-breaching party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have thirty (30) days from the date of the notice to initiate steps to cure. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. On termination, the non-breaching party retains all rights to any remedy for breach of the whole contract or any unperformed balance. Sonoma's right to terminate may be exercised by City Manager.

## **11. EPA SUBAWARD POLICY**

OVERVIEW: Program Offices may provide this subaward template to recipients of EPA financial assistance that are "pass-through entities" as defined by 2 CFR 200.1 to assist them in complying with the "subaward content" requirements in 2 CFR 200.331(a). EPA does not mandate the use of this template. For purposes of this Agreement, the pass-through entity is Sonoma and the subrecipient is Petaluma.

Pass-through entities may use their own form of subaward agreements provided the requirements of 2 CFR 200.331(a) are met. Any changes to the data elements that are required under 2 CFR 200.331(a) must be reflected in subsequent modifications to subawards. If any of the information required by 2 CFR 200.331(a) is not available, pass-through entities must provide the best information that is available to describe the Federal award and subaward.

Section I. – Project: North Bay Water Quality Partnership subaward to City of Petaluma.

Section II. Federal Requirements.

A. Federal Award Identification: TBD

- i. Subrecipient name: City of Petaluma
- ii. The subrecipient DUNS number: [TO FILL IN]
- iii. Federal Award Identification Number (FAIN): [TBD]
- iv. EPA Award Date: [TBD]
- v. Subaward Period of Performance Start and End Date: [4yrs from Award Date]
- vi. Subaward Budget Period Start and End Date: [TBD]
- vii. Amount of EPA Funds Obligated by the pass-through entity to the subrecipient: \$801,593.
- viii. Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation: [TBD]
- ix. Total Amount of the Federal Award committed to the subrecipient by the pass-through entity: [TBD]
- x. Federal award project description: [From award TBD]
- xi. Information identifying EPA as the Federal awarding agency, your organization as the pass-through entity, and contact information for your awarding official for the subaward: [TBA]
- xii. Catalog of Federal Domestic Assistance (CFDA) Number and Name for each EPA award used to support the subaward. CFDA information for the pass-through entities' EPA award may be found on page 2 of EPA's Notice of Award form in the second chart under "EPA Award Information". (Note the Uniform Grant Guidance requires at 2 CFR 200.331(a)(1)(xi) that the Pass-through entities identify the dollar amount under each Federal award and the CFDA number at the time of disbursement of Federal funds to the subrecipient so it is important for pass-through entities to maintain accounting records to meet this requirement.
- xiii. Identification of whether the award is R & D: [TBD]
- xiv. Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414. [TBD]

- B. All "flow down" requirements imposed on the subrecipient by the pass-through entity to ensure that the EPA award is used in accordance with Federal statutes, regulations and the terms of the EPA award. The subrecipient is accountable to the pass-through entity for compliance with Federal requirements. In turn, the pass-through entity is responsible to EPA for ensuring that subrecipients comply with Federal requirements.

These requirements include, among others:

- i. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
- ii. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in General Condition of the pass-through entity's agreement with EPA entitled "Reporting Subawards and Executive Compensation."
- iii. Limitations on individual consultant fees as set forth in General Condition 2 CFR 1500.9 and the General Condition of the pass-through entity's agreement with EPA entitled "Consultant Fee Cap".
- iv. EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "Management Fees."
- v. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

## 12. ADDITIONAL REQUIREMENTS

- A. Authority to Amend Agreement. Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the Agreement or significantly lengthen time schedules may be executed by the City of Petaluma's Public Works Director in a form approved by its Counsel. Notwithstanding this authority, neither of the Cities is under any obligation to approve such amendments.
- B. No Waiver of Breach. The waiver by City of Sonoma 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.
- C. Construction:
  - 1) 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.
  - 2) The City of Petaluma and the City of Sonoma 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. City of Petaluma and the City of Sonoma acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- J. Independent Agency. Petaluma and Sonoma render their services under this Agreement as independent agencies. None of the Petaluma's agents or employees shall be agents or employees of Sonoma and none of Sonoma's agents or employees shall be agents or employees of Petaluma.
- K. Dispute Resolution. If any conflicts or disputes arise between the parties to this Agreement, each party shall assign staff to meet with the other party in a timely manner to resolve the conflict or dispute.
- L. Acceptance of Electronic Signatures and Counterparts. The parties agree that this Agreement, any Agreements ancillary to this Agreement and related documents to be entered into this Agreement will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Agreement may be executed in two or more counterparts, all of which constitute one and the same instrument.

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

Approved as to form:

**City of Sonoma**

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

City Attorney

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

David Guhin

City Manager

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

Attest:

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

City Clerk

Approved:

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

Department Director

Approved as to form:

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

City Attorney

Approved:

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

City's Risk Manager

**City of Petaluma**

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

City Manager

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

Attest:

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

City Clerk