

RESOLUTION NO. 2013-050

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT WITH SONOMA COUNTY WATER AGENCY FOR REIMBURSEMENT FUNDING OF THE CITY OF ROHNERT PARK'S LOCAL SUPPLY PROJECT (LRT2 PROGRAM)

WHEREAS, Sonoma County Water Agency ("Water Agency") and the City of Rohnert Park ("City") share the goal of promoting cost effective water conservation measures, recycled water projects that offset potable water use and standby local peak month production capacity projects that reduce peak demand on a transmission system;

WHEREAS, the Water Agency, City and other parties entered into the Restructured Agreement for Water Supply to provide a water supply or supplemental water supply with the City and other parties, which became effective June 23, 2006;

WHEREAS, Pursuant to Section 2.6 (Recycled Water and Local Supply Projects) of the Restructured Agreement for Water Supply, the Water Agency may fund the capital cost of local supply projects that have been approved by the Water Advisory Committee;

WHEREAS, Pursuant to Section 4.15 (Operation and Maintenance Charge- Recycled Local Water Supply) of the Restructured Agreement for Water Supply, the Water Agency shall calculate and collect, as part of the Operations and Maintenance Surcharge, a recycled water and local supply sub-charge. These funds shall be distributed to water contractors such as the City for developing recycled water projects that offset potable water use, and for developing standby local peak-month production capacity that reduces demands on the Water Agency's water transmission system;

WHEREAS, City has designed and constructed groundwater well improvements in the City's distribution system ("Project"). On January 9, 2011, the Water Advisory Committee approved funding for a portion of the construction of City's Project under the Local Supply/Recycled Water /Tier 2 Water Conservation (LRT2) Program in the amount of \$649,629, over two years (\$325,000 for the first year). Funding is available from Water Agency appropriations in the category of "Recycled Water and Local Supply"; and

WHEREAS, City now wishes to be reimbursed for its LRT2 activities and the Water Agency requires an agreement for said reimbursement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby resolve, determine, find and order as follows:

Section 1. The City Council of the City of Rohnert Park hereby authorizes and approves the Agreement for Reimbursement Funding of the City of Rohnert Park's Local Supply Project in substantially similar form as described and depicted in Exhibit A, subject to minor modification by the City Manager and/or City Attorney, which is attached hereto and incorporated herein by this reference ("Agreement for Reimbursement").

Section 2. The Mayor is hereby authorized and directed to execute the Agreement for Reimbursement on behalf of the City of Rohnert Park.

Section 3. The authorization and approval of the Agreement for Reimbursement is exempt from CEQA because the approval of the Agreement for Reimbursement does not constitute a project as it involves the creation of government funding mechanisms and involves continuing administrative and maintenance activities under CEQA Guidelines Section 15378(b).

Section 4. If any action, subsection, sentence, clause or phrase of this Resolution or the Agreement for Reimbursement authorized by this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution or the Agreement for Reimbursement authorized by this Resolution that can be given effect without the invalid provisions.

DULY AND REGULARLY ADOPTED this 26th day of March, 2013.



CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford, Mayor

ATTEST:

Jeanne M. Buergler
Jeanne Buergler, City Clerk

Exhibits -

Exhibit A: Agreement for Reimbursement

AHANOTU: AYE BELFORTE: AYE MACKENZIE: AYE CALLINAN: AYE STAFFORD: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

"Working Today for Water Tomorrow"

The Sonoma County Water Agency's Integrated Management Policy for ISO 9001 and 14001 states that we are committed to always improving, achieving customer satisfaction, total regulatory compliance, environmental stewardship, and resource management.

**AGREEMENT FOR REIMBURSEMENT FUNDING
OF CITY OF ROHNERT PARK'S LOCAL SUPPLY PROJECT (LRT2 PROGRAM)**

This Agreement is between the **Sonoma County Water Agency**, a body corporate and politic of the State of California (hereinafter "Water Agency"), and **City of Rohnert Park** (hereinafter "City").

RECITALS

- A. The Water Agency and the City of Rohnert Park share the goal of promoting cost effective water conservation measures, recycled water projects that offset potable water use and standby local peak month production capacity projects that reduce peak demand on a transmission system.
- B. Pursuant to Section 2.6 (Recycled Water and Local Supply Projects) of the Restructured Agreement for Water Supply, the Water Agency may fund the capital cost of local supply projects that have been approved by the Water Advisory Committee.
- C. Pursuant to Section 4.15 (Operation and Maintenance Charge- Recycled Local Water Supply) of the Restructured Agreement for Water Supply, the Water Agency shall calculate and collect, as part of the Operations and Maintenance Surcharge, a recycled water and local supply sub-charge. These funds shall be distributed to water contractors for developing recycled water projects that offset potable water use, and for developing standby local peak-month production capacity that reduces demands on the Water Agency's water transmission system.
- D. City has designed and constructed groundwater well improvements in the City's distribution system (Project). On January 9, 2011, the Water Advisory Committee approved funding for a portion of the construction of City's Project under the Local Supply/Recycled Water /Tier 2 Water Conservation (LRT2) Program in the amount of \$649,629, over two years (\$325,000 for the first year). Funding is available from appropriations in the category of "Recycled Water and Local Supply."
- E. City has acquired any and all property or easements wherein said Project has been constructed, and is willing to operate and maintain said Project in perpetuity.
- F. City is Lead Agency for the Project under the requirements of the California Environmental Quality Act and has prepared all appropriate environmental documents; has obtained necessary permits from utilities or regulatory agencies for construction of the project; has designed the project including all design surveying and construction staking; and has bid, awarded, and constructed the project.

- G. Water Agency and City do mutually desire to either fully or partially fund construction of said project.

AGREEMENT

City and Water Agency agree as follows:

1. **RECITALS**

- A. The above recitals are true and correct.

2. **COORDINATION**

- A. City shall coordinate the work with Water Agency's Project Manager. Contact information:

Water Agency	City
Project Manager: Claire Nordlie	Contact: Darrin Jenkins
404 Aviation Blvd.	130 Avram Avenue
Santa Rosa, CA 95403-9019	Rohnert Park, CA 94928
Phone: 707-524-1165	Phone: 707-588-2243
Email: Claire.Nordlie@scwa.ca.gov	Email: dajenkins@rpcity.org

3. **CITY'S RESPONSIBILITIES**

City is seeking reimbursement for work already completed.

- A. General: City agrees to perform all work in accordance with the requirements of applicable federal, state, and local laws.
- B. Permits: City shall obtain any permits that may be necessary from utilities or regulatory agencies for construction of the Project.
- C. Right-of-Way: City shall acquire any and all additional land or easements as necessary for the construction of the Project.
- D. Design and Surveying: City shall design the Project including all design surveying and construction staking.
- E. Final Plans and Specifications: City shall prepare and provide Water Agency with a final complete set of all Project construction documents upon request if needed, within 30 days of request. Such documents shall be prepared by and signed and stamped by or under the responsible charge of appropriately registered professionals..
- F. Contract Administration: City shall administer the contract for construction of the Project.
- G. Inspection: City shall inspect the Project.
- H. Notice of Completion and Record Drawings: City shall file the Notice of Completion for construction.. City shall prepare record drawings showing any changes, deletions, or additions to the Project and provide a reproducible set to Agency, upon request, within 30 days of such request.
- I. Title: All title to all Project facilities constructed pursuant to this agreement shall vest with City.
- J. Operation and Maintenance: City shall accept ownership and shall operate and maintain Project in perpetuity.
- K. Indemnification: City agrees to accept all responsibility for loss or damage to any person or entity, including Water Agency, and to indemnify, hold harmless, and release Water Agency, its officers, agents, and employees, from and against any actions, claims, damages,

liabilities, disabilities, or expenses, that may be asserted by any person or entity, including City, that arise out of, pertain to, or relate to City's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. City agrees to provide a complete defense for any claim or action brought against Water Agency based upon a claim relating to City's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. City's obligations under this Article apply whether or not there is concurrent negligence on the part of Water Agency, but, to the extent required by law, excluding liability due to conduct of Water Agency. Water Agency shall have the right to select its legal counsel at City's expense, subject to City'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 City or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

- L. Records: City shall maintain complete and accurate records of all transactions in compliance with generally accepted accounting principles for enterprise accounting as promulgated by the American Institute of Certified Public Accountants and the Governmental Accounting Standards Board. Such records shall be available to Water Agency at all reasonable times for inspection and analysis.
- M. Statement of Costs: Within 60 days of execution of this Agreement, City shall submit to Water Agency a summary statement describing accounting of City's Project costs.
- N. Summary Report: Within 60 calendar days of execution of this Agreement, City shall provide Agency with a written report summarizing how the completed Project will reduce demands on Agency's water transmission system.
- O. Indemnification: City agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to Water Agency, and to defend, indemnify, hold harmless, reimburse and release Water Agency, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense, including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by Water Agency to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including City, arising out of or in connection with the performance of City hereunder, whether or not there is concurrent negligence on the part of Water Agency, but, to the extent as may be required by law, excluding liability due to the sole negligence, active negligence, or willful misconduct of Water Agency. If there is a possible obligation to indemnify, City's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. Water Agency shall have the right to select its own legal counsel at the expense of City, subject to City's approval, which approval 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 City or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- P. Invoices: City shall invoice Water Agency for costs authorized under this Agreement. All invoices submitted to Water Agency by City shall be clearly marked with "City of Rohnert Park, Funding of LRT2 Program, Project/Task No. 3944-A6 and Account No. 675736-8010."

4. WATER AGENCY'S RESPONSIBILITIES

- A. Reimbursement for Design and/or Construction Costs: Upon execution of this Agreement and receipt of an invoice, Water Agency will reimburse City for costs incurred to date for

the Project, up to \$325,000 for fiscal year 2012/2013, and the remainder in the following fiscal year, as authorized herein and as approved by Agency's Project Manager.

B. Total: Total amount paid to City by Agency for this Project shall not exceed \$649,629.00

5. ADDITIONAL REQUIREMENTS

A. Excess Costs: City shall fund Project costs in excess of \$649,629.00.

B. Authority to Amend Agreement: Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties.

C. No Waiver of Breach: The waiver by Water Agency 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.

D. 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.

City and Water Agency 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 and Water Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

E. 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.

F. 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.

G. 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.

H. 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.

I. Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

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

REVIEWED AS TO SUBSTANCE:

By: _____
WATER AGENCY GENERAL MANAGER

REVIEWED AS TO FUNDS:

By: _____
WATER AGENCY DIVISION MANAGER -
ADMINISTRATIVE SERVICES

REVIEWED AS TO FORM:

By: _____
COUNTY COUNSEL

APPROVED AS TO FORM:

CITY OF ROHNERT PARK

By: _____
CITY ATTORNEY

By: _____
MAYOR

DATE: _____

ATTEST:

By: _____
CITY CLERK

SONOMA COUNTY WATER AGENCY

By: _____
CHAIR, BOARD OF DIRECTORS

DATE: _____

ATTEST:

By: _____
CLERK OF THE BOARD