

# Bay Area Proposition 84 Integrated Regional Water Management Grant

## Memorandum of Understanding

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This Memorandum of Understanding (“MOU”) is entered into on October 15, 2014 between Solano County Water Agency (“SCWA”) and the following Participating Agencies (“PAs”): Alameda County Water District, Bay Area Water Supply and Conservation Agency, City of Napa, Contra Costa Water District, East Bay Municipal Utility District, Sonoma County Water Agency, Santa Clara Valley Water District, San Francisco Public Utilities Commission, Sonoma Resource Conservation District, Zone 7 Water Agency, and the Alameda County Waste Management Authority (StopWaste).

**WHEREAS**, on behalf of numerous public agencies located in the San Francisco Bay Area, Association of Bay Area Governments (“ABAG”) applied for and received a Proposition 84 Integrated Regional Water Management Grant (the “State Grant”) from the State of California, Department of Water Resources (“DWR”) in the amount of \$20,000,000.00 to help fund the implementation and operation of various regional water conservation, water recycling, ecosystem restoration, green infrastructure, and flood management-watershed projects (“Projects”). The grant agreement between DWR and ABAG titled AGREEMENT NUMBER 46000010575 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANTS (the “State Agreement”) is attached hereto and incorporated herein as Attachment A; and

**WHEREAS**, the State Grant includes \$2,700,000.00 to fund water conservation programs for SCWA and the following PAs: Alameda County Water District, Bay Area Water Supply and Conservation Agency, City of Napa, Contra Costa Water District, East Bay Municipal Utility District, Sonoma County Water Agency, Santa Clara Valley Water District, San Francisco Public Utility Commission, Zone 7 Water Agency, Alameda County Waste Management Authority (StopWaste), and the Sonoma Resource Conservation District; and

**WHEREAS**, SCWA and ABAG have entered into an Implementation Agreement dated, XXXX (“Implementation Agreement”), attached hereto and incorporated herein as Attachment B, by which ABAG agrees to disburse funding from the State Grant to SCWA for SCWA to use in administration and performance of eligible Projects under the State Grant; and

**WHEREAS**, the State Agreement and Implementation Agreement permits SCWA to pass State Grant funds through to another agency to carry out the purposes of the State Grant; and

**WHEREAS**, SCWA wishes to pass State Grant funds through to the PAs in this MOU to use in the performance of eligible Projects, and the PAs desire to receive State Grant funds, and

are willing to cooperate in fulfilling SCWA's obligations under the Implementation Agreement, all in conformity with the State Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. Term**

This MOU will be in effect as long as the Implementation Agreement between ABAG and SCWA terminates on December 31, 2018, or when all of the Parties' obligations under the State Agreement are fully satisfied, whichever occurs earlier. Notwithstanding the date on which this MOU is executed, projects initiated on or after February 4, 2014, that meet State Grant program and State Agreement requirements, are eligible for reimbursement under this MOU. Each PA must abide by the State Agreement and the guidelines located therein.

**2. Grant Funding Allocation by Participating Agency**

2.1 Pursuant to the Implementation Agreement, State Grant funds for eligible water conservation projects are available to PAs in the amounts listed in Table 1, Participating Agency State Grant Fund Allocations.

**Table 1. Participating Agency State Grant Fund Allocations**

<b>PARTICIPATING AGENCY</b>	<b>TOTAL GRANT DOLLARS AWARDED</b>
Alameda County Water Agency	\$173,250
Bay Area Water Supply and Conservation Agency	\$195,000
City of Napa	\$127,500
Contra Costa Water District	\$174,375
East Bay Municipal Utility District	\$240,000
San Francisco Public Utilities Commission	\$234,300
Santa Clara Valley Water District	\$490,313
Solano County Water Agency	\$129,376
Sonoma County Water Agency	\$202,500
Sonoma Resource Conservation District	\$195,000
StopWaste	\$200,193
Zone 7 Water Agency	\$188,193
Grant Administration	\$150,000
<b>Total</b>	<b>\$2,700,000</b>

2.2 Each PA will be entitled to receive its allocation of grant funds during the term of the State Agreement.

2.3 SCWA will utilize the services of a consultant, GHD, to aid in the administration of the IRWMP Conservation Grant. As the lead agency for the conservation portion of the State Grant, SCWA is responsible for compliance with all reporting provisions of the State Agreement and shall also be responsible for all management, oversight, compliance, operation, and maintenance associated with the Project. The allocation amount for Grant Administration is intended to reimburse SCWA for any expenses related to management and administration of the conservation portion of the State Grant. Any grant funds remaining after SCWA has been reimbursed may be allocated on a pro rata basis among the remaining PAs for their respective grant administration costs.

2.4 Each PA's grant funding allocation was determined based on a specific number and type of rebate. A Rebate Spreadsheet, attached hereto and incorporated herein as Attachment C, was developed that lists the number and type of each rebate or water conservation project and the water savings associated with each type of rebate or water conservation project. This information was used as the basis for the State Grant. Pending DWR approval, each PA may increase or decrease the number and type of rebates they provide. However, the resulting water savings per grant dollar spent must be equal to or greater than what is specified in the Rebate Spreadsheet.

If necessary, at any time and prior to completion of the Final Quarterly Report and Invoice, the PAs shall convene to determine, consistent with the State Agreement and Implementation Agreement, how unspent, forfeited, or remaining State Grant funds will be redistributed. If the PAs are unable to reach agreement as to how unspent, forfeited, or remaining State Grant funds will be redistributed, the funds shall be redistributed equally among the remaining agencies.

### **3. Work Plan**

To be eligible for State Grant funds, the PAs shall implement conservation projects in accordance with the Work Plan section (Exhibit A) of the Implementation Agreement.

### **4. Reporting and Invoicing**

4.1 The PAs have developed a Grant Reporting Template, attached hereto and incorporated herein as Attachment D, which specifies required quarterly reporting data. The Grant Reporting Template shall be used by all PAs when reporting.

4.2 On a quarterly basis, SCWA will prepare a Quarterly Progress Report and Invoice and submit it to ABAG according to the terms of the Implementation Agreement. The PAs will provide SCWA with the required program data for their agency on a quarterly basis in electronic format using the Grant Reporting Template.

4.3 Quarterly Progress Reports and Invoices will be submitted according to the schedule shown in Table 2, State Grant Quarterly Progress Report and Invoice Schedule, and the following process:

- 4.3.1 On not less than a quarterly basis, SCWA will request Quarterly Progress Report data from the PAs. Using the Grant Reporting Template, the PAs will submit their data and individual invoices electronically to SCWA within five (5) business days.
- 4.3.2 Within ten (10) business days after SCWA's initial request for Quarterly Progress Report data, SCWA will prepare and distribute a draft Quarterly Progress Report and Invoice to the PAs for review and approval.
- 4.3.3 The PAs will provide written corrections or approval to SCWA within five (5) business days of its receipt of SCWA's draft Quarterly Progress Report and Invoice.
- 4.3.4 Within five (5) business days of receipt of corrections or approval from the PAs, SCWA will incorporate the corrections and submit a final draft of the Quarterly Progress Report and Invoice for approval by the PAs.
- 4.3.5 The PAs will provide written corrections or approval to SCWA within two (2) business days of its receipt of SCWA's final draft Quarterly Progress Report and Invoice.
- 4.3.6 Within three (3) business days of receipt of corrections or approval from the PAs, SCWA will incorporate the corrections and submit the final approved Quarterly Progress Report and Invoice to ABAG pursuant to its obligations under the Implementation Agreement.
- 4.3.7 If a PA does not meet the above-stated reporting deadlines, that PA's data will not be included in the Quarterly Progress Report and Invoice. The PA will be required to wait until the following quarter to submit their data.

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<b>TABLE 2. IRWMP Round 2 Conservation Grant</b>		
<b>Reporting Period</b>	<b>Date Reporting Numbers and Back-up Due to Solano/GHD</b>	<b>Date Progress Report/Invoice Due to ABAG</b>
February 5 to December 31, 2014	2/14/2015	3/1/2015
January 1 to March 31, 2015	5/15/2015	5/30/2015
April 1 to June 30, 2015	8/14/2015	8/29/2015
July 1 to September 30, 2015	11/14/2015	11/29/2015
October 1 to December 31, 2015	2/14/2016	2/29/2016
January 1 to March 31, 2016	5/16/2016	5/31/2016
April 1 to June 30, 2016	8/15/2016	8/30/2016
July 1 to September 30, 2016	11/15/2016	11/30/2016
October 1 to December 31, 2016	2/15/2017	3/2/2017
January 1 to March 31, 2017	5/16/2017	5/31/2017
April 1 to June 30, 2017	8/14/2017	8/29/2017
July 1 to September 30, 2017	11/14/2017	11/29/2017
October 1 to December 31, 2017	2/14/2018	3/1/2018
January 1 to March 31, 2018	5/15/2018	5/30/2018
April 1 to June 30, 2018	8/14/2018	8/29/2018
July 1 to September 30, 2018	11/14/2018	11/29/2018
October 1 to December 31, 2018	2/14/2019	3/1/2019

4.3.12 Pursuant to the Implementation Agreement with ABAG, SCWA will submit Project Completion Reports and a Grant Completion Report Plan within the time period stipulated in the Agreement.

4.3.13 SCWA is also required to submit Project Performance Reports directly to DWR each year for ten (10) years after the end of the grant period. The PAs will work with SCWA to provide the necessary data for, and review of, these reports consistent with the schedule and process for the Quarterly Progress Reports.

4.3.14 After SCWA has submitted the Quarterly Progress Report and Invoice to ABAG, PAs that have not already done so shall submit an invoice to SCWA for reimbursement. The invoice shall reference the activity period and match the activities and costs submitted in that PA's Grant Reporting Template submittal.

4.3.15 SCWA will not reimburse the PAs until it has received the State Grant funds from DWR through ABAG. In addition, pursuant to the terms of the State Agreement, DWR may withhold a percentage of payment on each quarterly invoice until the project is complete and all reporting requirements are met. If this is the case, SCWA may withhold the same percentage from payment on the individual PA invoices. SCWA will process each PA invoice within thirty (30) business days of receipt of State Grant funds from ABAG.

## **5. Communication**

All communications relating to the day-to-day activities of the Water Conservation Projects shall be exchanged between the project managers or their alternates for each PA as shown on Attachment E, Contact Information for BAIRWMP Conservation Grant, which is attached hereto and incorporated herein.

## **6. Flow Through of Specific Grant Requirements**

The PAs will comply with all applicable provisions of the Implementation Agreement, Attachment B hereto, and State Agreement, Attachment A hereto.

## **7. Inspection of Records**

Pursuant to the State Agreement, DWR is entitled to inspect and make copies of any records pertaining to the program and the PAs are required to make available for such inspection accurate records of all costs, disbursements, and documentation as necessary to comply with the requirements of the State Agreement.

## **8. Indemnification**

SCWA agrees to defend, indemnify, hold harmless, and release each PA, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, arising out of the negligence or willful misconduct of SCWA in connection with its performance under this Agreement; provided, however, that no PA shall be entitled to indemnification under this section for any actions, claims, damages,

liabilities, or expenses to the extent that they arise out of the negligence or willful misconduct of the PA in connection with its performance under this Agreement.

Each PA hereby agrees to defend, indemnify, hold harmless, and release SCWA, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, arising out of the negligence or willful misconduct of the indemnifying PA in connection with its performance under this Agreement; provided, however, that SCWA shall not be entitled to indemnification under this section for any actions, claims, damages, liabilities, or expenses to the extent that they arise out of the negligence or willful misconduct of SCWA in connection with its performance under this Agreement.

## **9. Dispute Resolution**

The parties to this MOU shall meet promptly to address any dispute that may arise and make a good faith effort to negotiate a resolution. The use by any party of any remedy specified herein for the enforcement of this MOU is not exclusive and shall not deprive any party of, or limit the application of, any other remedy provided by law.

## **10. Governing Law**

This MOU, its construction, and all work performed under it shall be governed by the laws of the State of California.

## **11. Severability**

If any provision of this MOU is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this MOU shall be remain valid and in force and be construed in such a manner so as to affect the original intent of the parties to the maximum extent possible.

## **12. Amendment**

No amendment of this MOU shall be valid unless made in writing, signed by the all PAs then party to the MOU.

## **13. Entire Agreement**

This MOU, together with the attachments hereto, constitutes the complete agreement between the parties and supersedes any prior written or oral communications between the parties.

## **14. Termination**

Any PA may, at any time and without cause, terminate its participation in this MOU by sending a letter to all other PAs notifying them of the same. Notwithstanding any other provision of this MOU, if a PA terminates its participation in this MOU, it shall not under any circumstances be responsible or liable for disrupting or discontinuing the disbursement of the State Grant funds simply by reason of exercising its right to terminate its participation in the MOU.

Upon the effectiveness of a PA's termination of its participation in this MOU, that PA's remaining allocation of the grant funds, if any, will be redistributed to the remaining PAs in accordance with Section 2 of this MOU and in conformance with the Implementation Agreement and State Agreement. Any PA terminating its participation in this MOU must continue to comply with the reporting obligations to SCWA, as described in Section 4 of this MOU.

This MOU will remain in full force and effect as to the PAs that do not terminate their participation in the MOU.

#### **15. Term of the MOU**

This MOU terminates when all parties' obligations under this MOU, the State Agreement, Attachment A hereto, and Implementation Agreement, Attachment B hereto, have been fully satisfied.

#### **15. Successors and Assigns**

This MOU and all of its provisions shall apply to and bind the successors and assigns of each and every party to this agreement.

#### **16. Counterpart Signatures**

This MOU may be executed in counterparts each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

#### **17. Non-Waiver**

A Party's waiver of any term, condition, or covenant, or breach of any term, condition or covenant stated in this MOU will not be construed as a waiver of any other term, condition or covenant.

#### **18. Attachments**

The following Attachments are hereby incorporated herein by this reference and made a part hereof as though set forth in full:

Attachment A: State Agreement

Attachment B: Implementation Agreement

Attachment C: Rebate Spreadsheet

Attachment D: Grant Reporting Template

Attachment E: Contact Information for BAIRWMP Round 2 Conservation Grant.

(signatures to follow on separate pages in counterparts)



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IN WITNESS THEREOF, this MOU has been executed by the parties hereto:

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

David Okita  
General Manager  
Solano County Water Agency

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

Walter L. Wadlow  
General Manager  
Alameda County Water District

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

Jacques R. LaRoche  
Public Works Director  
City of Napa

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

Gary Wolff  
Executive Director  
StopWaste

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

Nicole Sandkulla  
Chief Executive Officer/General Manager  
Bay Area Water Supply and Conservation Agency

Date:

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Alexander R. Coate  
General Manager  
East Bay Municipal Utility District

Date:

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Jerry Brown  
General Manager  
Contra Costa Water District



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

Beau Goldie  
CEO  
Santa Clara Valley Water District

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

Kara Heckert  
Executive Director  
Sonoma Resource Conservation District

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

Grant Davis  
General Manager  
Sonoma County Water Agency

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

Harlan L. Kelly, Jr.  
General Manager  
San Francisco Public Utilities Commission

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

G.F. Duerig  
General Manager  
Zone 7 Water Agency