

Bay Area Proposition 84 Integrated Regional Water Management 2014 Drought Grant

Memorandum of Understanding

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

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 \$32,178,423 to help fund the implementation and operation of various regional drought relief, water conservation, water recycling, ecosystem restoration, green infrastructure, and flood management-watershed projects (“Projects”). The grant agreement between DWR and ABAG titled “AGREEMENT NUMBER 460010883 PROPOSITION 84 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) 2014 DROUGHT GRANT” (the “State Agreement”) is attached hereto and incorporated herein as Attachment A; and

WHEREAS, the State Grant includes \$5,993,971.00 to fund water conservation programs for StopWaste and the PAs; and

WHEREAS, StopWaste and ABAG have entered into an Implementation Agreement titled “LOCAL PROJECT SPONSOR AGREEMENT between ABAG/SFEP AND ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY PROPOSITION 84 INTEGRATED REGIONAL WATER MANAGEMENT 2014 DROUGHT GRANT,” dated July 20, 2015 (“Implementation Agreement”), attached hereto and incorporated herein as Attachment B, by which ABAG agrees to disburse funding from the State Grant to StopWaste for StopWaste to use in administration and performance of eligible Projects under the State Grant; and

WHEREAS, the State Agreement and Implementation Agreement permit StopWaste to pass State Grant funds through to another agency to carry out the purposes of the State Grant; and

WHEREAS, StopWaste wishes to pass State Grant funds through to the PAs via 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 StopWaste'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 until the Implementation Agreement between ABAG and StopWaste terminates on May 1, 2019, 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 January 17, 2014, that meet State Grant program and State Agreement requirements and are not eligible for reimbursement under the grant agreement between DWR and ABAG titled "AGREEMENT NUMBER 46000010575 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANTS," are eligible for reimbursement under this MOU. Each PA must abide by the State Agreement and the guidelines located therein and the Implementation Agreement.

2. Grant Funding Allocation by Participating Agency

2.1 Pursuant to the Implementation Agreement, State Grant funds for eligible Projects are available to PAs in the amounts listed in Attachment C, Participating Agency State Grant Fund Allocations and Cost Share (attached hereto and incorporated herein), subject to reallocation in accordance with section 2.4 of this MOU. Attachment C also lists the cost share required under the State Grant.

2.2 Each PA will be entitled to receive its allocation of grant funds during the term of the State Agreement and agrees to fund the difference between its Total Project Cost and Grant Amount specified in Attachment C. Each PA's cost share consists of Funding Match and Additional Cost Share as defined in sections 5 and 6 of the State Agreement and documented in Attachment C. Each PA is required to maintain all financial records associated with the total project cost for inclusion in the final project report. If StopWaste is required to make grant funds available to ABAG for grant administration pursuant to section 4.5 of the Implementation Agreement then each PA will be obligated to pay its proportionate share of the amount required to be reallocated to ABAG based on the amounts listed below, which reflect each PA's allocation of grant funding as shown in Attachment C at the time of execution of this MOU. Pursuant to section 5.11 of the Implementation Agreement the total amount due under section 4.5 will not exceed \$30,735. StopWaste has requested authorization from DWR for PAs to apply State Grant funds for this purpose. The maximum additional cost per individual PA for ABAG administration will not exceed the amounts in Table 1.

Table 1: Maximum and Proportionate Additional Administrative Costs Per PA

PA	Maximum Additional Cost	Proportionate Share of Reallocation to ABAG
ACWD	\$2,743.29	8.9%
BAWSCA	\$2,743.29	8.9%
CCWD	\$2,563.83	8.3%
City of Napa	\$1,615.21	5.3%
EMBUD	\$2,743.29	8.9%
MMWD	\$1,733.15	5.6%
SCVWD	\$5,127.65	16.7%
SFPUC	\$2,743.29	8.9%
Solano	\$2,743.29	8.9%
Sonoma	\$2,743.29	8.9%
Zone 7	\$1,538.30	5.0%
StopWaste	\$1,697.10	5.5%

The obligations summarized in Table 1 shall survive termination of this MOU.

2.3 StopWaste will utilize the services of a consultant to aid in the administration of its responsibilities pursuant to this MOU. As the lead agency for the conservation portion of the State Grant, StopWaste 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 program. The allocation amount for Grant Administration is intended to reimburse StopWaste for any expenses related to management and administration of the conservation portion of the State Grant. Any grant funds remaining after StopWaste has been reimbursed may be allocated on a pro rata basis among the PAs participating in the MOU at that time 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 or conservation project activity. The Participating Agency State Grant Fund Allocations and Cost Share table in Attachment C are based on 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. Additional

funding for program activities performed during the grant's reporting period may be awarded to participating agencies and administered by StopWaste pending a reallocation of funds. Pending StopWaste approval, each PA may increase or decrease the number and type of rebates or project activities they provide, provided that (i) the resulting water savings per grant dollar spent must be equal to or greater than what is specified in Attachment C, (ii) the change does not require a reallocation of the total State Grant Fund Allocations between or among two or more PAs, and (iii) the reallocation does not reduce PA's Cost Share specified in Attachment C. Other changes to the total State Grant Fund Allocations may be initiated by providing StopWaste with a reallocation request signed on behalf of the PA requesting an increase in the allocated amount and the PA or PAs agreeing to a corresponding decrease in the allocated amount. StopWaste will seek approval from DWR and ABAG on behalf of the requesting PAs. If the reallocation is approved StopWaste will update Attachment C to reflect the reallocation and provide a copy of the updated attachment to all the PAs. The reallocation will become effective at the time the updated attachment is distributed by StopWaste. No amendment to this MOU shall be required for revisions to Attachment C in accordance with these procedures.

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 PAs participating in this MOU at the time.

3. Work Plan

To be eligible for State Grant funds, the PAs shall implement the activities listed in Task 4 of the Work Plan, which is Exhibit A to the Implementation Agreement. These activities are also listed as that PA's responsibility in Attachment C to this MOU.

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 the required data.

4.2 On a quarterly basis, StopWaste 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 StopWaste 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 by StopWaste to ABAG according to the schedule shown in Table 1, State Grant Quarterly Progress Report and Invoice Schedule, and the following process:

4.3.1 On not less than a quarterly basis, StopWaste 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 StopWaste within five (5) business days.

- 4.3.2 Within ten (10) business days after StopWaste's initial request for Quarterly Progress Report data, StopWaste 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 StopWaste within five (5) business days of its receipt of StopWaste's draft Quarterly Progress Report and Invoice.
- 4.3.4 Within five (5) business days of receipt of corrections or approval from the PAs, StopWaste 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 StopWaste within two (2) business days of its receipt of StopWaste'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, StopWaste 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.
- 4.3.8 Pursuant to the Implementation Agreement with ABAG, StopWaste will submit Project Completion Reports and a Grant Completion Report Plan within the specified time period.
- 4.3.9 StopWaste 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 StopWaste to provide the necessary data for, and review of, these reports consistent with the schedule and process for the Quarterly Progress Reports.
- 4.3.10 After StopWaste has submitted the Quarterly Progress Report and Invoice to ABAG, PAs that have not already done so shall submit an invoice to StopWaste for reimbursement. The invoice shall reference the activity period and match the activities and costs submitted in that PA's Grant Reporting Template submittal.
- 4.3.11 StopWaste 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, StopWaste may withhold the same percentage from payment on the individual PA invoices. StopWaste will process each PA invoice within thirty (30) business days of receipt of State Grant funds from ABAG.

Table 2. IRWMP Round 3 Conservation Grant Deadlines

Reporting Period	Date Reporting Numbers and Back-up Due to StopWaste/BKi	Date Draft Invoice Sent to PAs for Review	Date PAs Review Comments Due to Stopwaste/BKi	Date Progress Report/ Invoice Due to ABAG
January 2014 to December 31, 2015	1/25/2016	2/4/2016	2/9/2016	2/15/2016
January 1 to March 31, 2016	4/25/2016	5/4/2016	5/9/2016	5/15/2016
April 1 to June 30, 2016	7/25/2016	8/4/2016	8/9/2016	8/15/2016
July 1 to September 30, 2016	10/24/2016	11/4/2016	11/9/2016	11/15/2016
October 1 to December 31, 2016	1/25/2017	2/4/2017	2/9/2017	2/15/2017
January 1 to March 31, 2017	4/24/2017	5/4/2017	5/9/2017	5/15/2017
April 1 to June 30, 2017	7/24/2017	8/4/2017	8/9/2017	8/15/2017
July 1 to September 30, 2017	10/25/2017	11/4/2017	11/9/2017	11/15/2017
October 1 to December 31, 2017	1/25/2018	2/4/2018	2/9/2018	2/15/2018
January 1 to March 31, 2018	4/24/2018	5/4/2018	5/9/2018	5/15/2018
April 1 to June 30, 2018	7/25/2018	8/4/2018	8/9/2018	8/15/2018

5. Communication

All communications concerning this MOU shall be exchanged between the project managers or their alternates for the PA to which the communication is directed as shown on Attachment E, which is attached hereto and incorporated herein. The contact information for any Party on Attachment E may be updated by written notice from the Party making the change to all persons listed on Attachment E. StopWaste will circulate updated versions of Attachment E from time to time. No amendment to this MOU is required for such updates to Attachment E. StopWaste will provide additional existing information upon request from PAs as appropriate.

6. 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. The obligations of this section 6 shall survive termination or expiration of this MOU.

7. Indemnification

StopWaste 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 StopWaste in connection with its performance under this MOU; 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 MOU.

Each PA hereby agrees to defend, indemnify, hold harmless, and release StopWaste, 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 MOU; provided, however, that StopWaste 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 StopWaste in connection with its performance under this MOU.

The obligations of this section 7 shall survive termination of this MOU.

8. 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.

9. Governing Law

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

10. 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.

11. Amendment

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

12. 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.

13. 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 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 StopWaste, as described in Section 4 of this MOU and the terms of Table 1 (concerning additional administrative costs), section 6 (concerning inspection of records), and section 7 (concerning indemnification), each of which shall survive such termination.

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

14. 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 MOU.

15. 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.

16. 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.

17. 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 (Local Project Sponsor Agreement)

Attachment C: Participating Agency State Grant Fund Allocations and Cost Share

Attachment D: Grant Reporting Template

Attachment E: 2014 Drought Grant - Bay Area Regional Conservation Program Participating Agencies/Contacts

(signatures follow on separate pages in counterparts)

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

_____ Date: _____

Wendy Sommer
Executive Director
StopWaste

_____ Date: _____

Roland Sanford
General Manager
Solano County Water Agency

_____ Date: _____

Robert Shaver
General Manager
Alameda County Water District

_____ Date: _____

Jacques R. LaRoche
Public Works Director
City of Napa

_____ Date: _____

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

Date:

Alexander R. Coate
General Manager
East Bay Municipal Utility District

Date:

Krishna Kumar
General Manager
Marin Municipal Water District

Date:

Jerry Brown
General Manager
Contra Costa Water District

_____ Date: _____

Beau Goldie
CEO
Santa Clara Valley Water 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