Agreement for Ownership and Transfer of Vaults – Sonoma Reservoir Site

This agreement (“Agreement”) is by and between Sonoma County Water Agency, (“Water Agency”) and City of Sonoma, (“City”). The Effective Date of this Agreement is the date the Agreement and the License Agreement, in the form of Exhibit A, are last signed by the parties to both the Agreement and License Agreement.

RECITALS

A. City represents that it currently is the sole owner of the Existing Vaults located at the Sonoma Reservoir site as shown on Exhibit B.

B. City has requested the Water Agency to relocate flow meters presently located elsewhere in the City of Sonoma to vault locations on the City’s property, as shown in Exhibit B (Site Map).

C. Water Agency requires the ownership of said vaults in order to make such modifications or alterations to the vaults as may be required by the Water Agency to comply with the City’s request.

D. City desires to transfer ownership of the Existing Vaults to facilitate the Water Agency’s relocation of the flow meters to the vault locations shown on the Site Map as shown on Exhibit B.

E. Water Agency, in exchange for ownership of the Existing Vaults shown in Exhibit B and for the City entering into the License Agreement in the form of Exhibit A, will relocate and/or replace, at Water Agency’s sole discretion, flow meter(s) that the Water Agency presently uses to meter deliveries of water to City to the Existing Vaults shown in Exhibit B.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

1.1. The above recitals are true and correct.

2. DEFINITIONS

2.1. Property means City owned property located at the site of Sonoma Reservoir, real property described in that certain Deed recorded July 25, 1933 in Book 346 of Official Records, beginning at Page 76, Sonoma County Records.
2.2. *Vaults* means the City owned facility on the Property as shown in Exhibit B as the Existing Vaults.

3. **LIST OF EXHIBITS**

3.1. The following exhibits are attached hereto and incorporated herein:
   a. Exhibit A: License Agreement
   b. Exhibit B: Site Map

4. **TRANSFER OF VAULT FROM CITY TO WATER AGENCY**

4.1. *Transfer of Vaults.* City hereby transfers to the Water Agency all rights, title, ownership and/or interest of any kind whatsoever in the Vaults, including, but not limited to, the exclusive right to own, operate, maintain and replace the Vaults.

4.2. *License for Facility Operation and Maintenance on City Property.* City and Water Agency agree to enter into, and abide by the terms of, the License Agreement in the form of Exhibit A.

5. **MUTUAL INDEMNIFICATION**

5.1. Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party or its agents, employees, contractors, subcontractors, or invitees under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

6. **MISCELLANEOUS PROVISIONS**

6.1. *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.

6.2. *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.

6.3. **Consent:** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

6.4. **No Third-Party Beneficiaries:** Except as provided in Article 5 (Mutual Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

6.5. **Applicable Law and Forum:** This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

6.6. **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.

6.7. **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.

6.8. **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.

6.9. **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 of the date last signed by the parties to the Agreement.

TW 15/16-083

Reviewed as to substance:
By: ________________________________
Water Agency General Manager

Reviewed as to funds:
By: ________________________________
Water Agency Division Manager - Administrative Services

Approved as to form:
By: ________________________________
Adam Brand, Deputy County Counsel

Sonoma County Water Agency

By: ________________________________
Chair, Board of Directors

Date: ________________________________

Attest:
By: ________________________________
Clerk of the Board

City of Sonoma

By: ________________________________
(Please print name here)

Title: ________________________________

Date: ________________________________
Exhibit A
License Agreement

This Agreement, made and entered into on ________________, 2016, by and between the CITY OF SONOMA, a municipal corporation, organized and existing under and by virtue of the laws of the State of California (“City”), and the SONOMA COUNTY WATER AGENCY, body corporate and politic, organized and existing under and by virtue of the laws of the State Of California (“Water Agency”).

RECITALS

WHEREAS, City is the owner of certain real property situated within the corporate limits of the City of Sonoma, County of Sonoma, State of California commonly known as the Sonoma Reservoir Site (hereafter referred to as the “City’s Property”), and being more particularly described as follows,

Real property described in that certain Deed recorded July 25, 1933 in Book 346 of Official Records, beginning at Page 76, Sonoma County Records, and

WHEREAS, City has consented to and granted permission to the Water Agency, to construct water transmission facilities and infrastructure, water storage facilities (reservoirs), and appurtenances thereto on City’s Property; and

WHEREAS, City has requested the Water Agency to relocate flow meters presently located elsewhere in the City of Sonoma to vault locations on the City’s Property, which are shown on the attached Site Map Attachment 1; and

WHEREAS, Water Agency requires the ownership of said vaults in order to make such modifications or alterations to the vaults as may be required by the Water Agency to comply with the City’s request; and

WHEREAS, the parties desire to clarify the rights of the Water Agency, in and to its use of City’s Property for the water transmission facilities and infrastructure, water storage facilities (reservoirs), and appurtenances that have previously been constructed by the Water Agency on City’s Property, and that are owned by the Water Agency; and

WHEREAS, the Water Agency desires to clarify it shall retain the ownership of all water transmission facilities and infrastructure, water storage facilities (reservoirs), and appurtenances, including said vaults, that it now or in the future places upon on the City’s Property, subject to the terms and conditions herein;

NOW, THEREFORE, in consideration of the Premises and of the agreements of the respective parties herein set forth, it is mutually agreed as follows:
AGREEMENT

1. License. City hereby grants the Water Agency, its contractors, agents, and permittees (hereafter referred to as “Licensee”), a License subject to all the terms and conditions of this License Agreement, to use the City’s Property described in Section 2 below for any and all uses described in Section 3 of this License Agreement, and any activities or purposes connected with such uses.

2. Premises. The geographic extent of the terms, conditions and provisions of this License Agreement shall apply to those portions of City’s Property shown for reference on the Site Map, as licensee may from time to time require for any and all uses, activities and purposes provided for in Section 4 below (herein referred to as the “Premises”).

3. Term. The term of this License Agreement shall continue indefinitely, unless earlier terminated in accordance with Section 10 below.

4. Use. Licensee shall be entitled to use the Premises as hereinabove described, for any and all purposes Licensee deems necessary for the continued operation, maintenance, control and security of water transmission facilities and infrastructure, water storage facilities (reservoirs), and appurtenances thereto that have previously been constructed on the Premises, that are now or shall in the future be constructed on the Premises. The uses contemplated herein may include, but are not limited to: accessing, operating, maintaining, removing, replacing, improving, and reconstructing said water transmission facilities and infrastructure, water storage facilities and infrastructure, and appurtenances thereto, and any storage, stockpiling, laydown, staging or placement of materials or equipment required by the Licensee to do so, so long as such activities do not unreasonably interfere with the City’s use of the Premises. Water Agency agrees to coordinate Licensee’s uses and activities of the Premises so as to minimize the impact of Licensee’s uses and activities to the City.
5. **Maintenance of Property.** Licensee shall continue to bear the cost and expense, and continue to be responsible for the maintenance of water transmission facilities and infrastructure, water storage facilities (reservoirs), and appurtenances that have previously been, or shall be in the future be, constructed on the Premises. City shall continue to bear the cost and expense, and continue to be responsible for the maintenance of any facilities or infrastructure and appurtenances now owned by the City, excluding the Vault referenced in the Agreement for Ownership and Transfer of Vaults - Sonoma Reservoir Site (Transfer Agreement), located on the Premises or that may hereafter be constructed on the Premises by the City, and any improvements that City may have made or may make in the future to City’s Property. In addition to the uses and privileges described in Section 4, the Licensee shall have the right and privilege under this License Agreement to improve the Premises as the Licensee may from time to time find necessary or convenient for the uses of and activities of the Licensee provided for by this License Agreement. Licensee shall bear the cost of, and be responsible for the repair of any damage to the premises caused by, or arising out of the licensee’s uses of the premises described in Section 4 above.

6. **Waste or Nuisance; Water Agency’s Rights in Property.** Licensee shall not commit or suffer: (a) any waste or nuisance on the Premises; (b) any action or use of the Premises which interferes or conflicts with the City’s, or any authorized person’s, use of the Premises; or (c) any action on the Premises in violation of any law or ordinance. Except as otherwise provided in this License Agreement, Licensee shall not undertake or permit any activity or use on the Premises that is inconsistent with the purpose of this License Agreement.

7. **Indemnification.** City and its officers, agents, and employees shall not be liable to Licensee or any third party for any injury, loss, or damage arising out of or in connection with the license granted herein. Licensee agrees to defend, indemnify, hold harmless, and release City, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses to the extent caused by Licensee’s negligence or willful misconduct in the use of the Premises, but excluding liability due to the negligence or willful misconduct of City.

8. **Insurance.** The parties acknowledge that Licensee is self-insured. If Licensee hires one or more contractors to perform work on its behalf on City’s Property, it shall require those contractors to have insurance as described below.

8.1. **Insurance Requirements of Contractors.** With respect to the construction, operation and maintenance of any improvements, Licensee shall require all of its contractors, subcontractors, consultants, and other agents to maintain insurance as required by Licensee’s Risk Manager. Such insurance shall include: (a) workers’ compensation insurance with statutory limits as required by the Labor Code of the State of California; (b) commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount not less than Two Million Dollars ($2,000,000) limit for each occurrence; and (c) automobile liability insurance covering bodily injury and
property damage in an amount no less than One Million Dollars ($1,000,000) combined single limit for each accident.

9. **Termination.** Licensor and Licensee may terminate this License Agreement for any reason whatsoever upon mutual agreement.

10. **Notice.** Any notice required or permitted to be given under this License Agreement shall be in writing. Delivery of such written notice shall be conclusively taken as sufficiently given forty-eight (48) hours after deposit in the United States mail, registered or certified, return receipt requested, with the postage thereon fully prepaid, addressed as follows:

   If to Licensee: John Monaghan  
   Sonoma County Water Agency  
   404 Aviation Boulevard  
   Santa Rosa, CA 95406

   If to City:  
   Sonoma City Hall  
   1 The Plaza  
   Sonoma, CA 95476

   Either party may at any time change its address for notices by giving written notice of such change to the other party in the manner provided in this Section 10.

11. **No Continuing Waiver.** The waiver by either party of any breach of any of the provisions of this License Agreement shall not constitute a continuing waiver of any subsequent breach of the same, or of any other provision of this License Agreement.

12. **General Provisions.**

   12.1. **Time of Essence.** Time is and shall be of the essence of this License Agreement and of each and every provision contained in this License Agreement.

   12.2. **Incorporation of Prior Agreements; Amendments.** This License Agreement contains all the agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This License Agreement may be modified in writing only, signed by the parties in interest at the time of the modification, and this sentence may not be modified or waived by any oral agreement, whether executed or unexecuted.

   12.3. **Binding Effect; Choice of Law.** This License Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors, and assigns. This License Agreement shall be governed by the laws of the State of California and any action to enforce the terms of this License Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
12.4. **No Third Party Beneficiaries.** Nothing contained in this License Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12.5. **Construction of License Agreement; Severability.** To the extent allowed by law, the provisions in this License Agreement shall be construed and given effect in a manner that avoids any violation of statute, regulation, or law. City and Licensee agree that in the event any provision in this License Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this License Agreement. City and Licensee acknowledge that they have each contributed to the making of this License Agreement and that, in the event of a dispute over the interpretation of this License Agreement, the language of the License Agreement will not be construed against one party in favor of the other. City and Licensee further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this License Agreement.

12.6. **Relationship.** The parties intend by this License Agreement to establish the relationship of City and Licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of Licensor and Licensee.

12.7. **Captions.** The captions in this License Agreement are for convenience only and are not a part of this License Agreement. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

TW 15/16-083

Reviewed as to substance:

By: ________________________________
Water Agency General Manager

Approved as to form for Licensee:

By: ________________________________
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
Water Agency

Date/TW Initials: _____________________

Sonoma County Water Agency

By: ________________________________
Chair, Board of Directors

Date: ______________________________

Attest:

By: ________________________________
Clerk of the Board

City of Sonoma

By: ________________________________

(Please print name here)

Title: ______________________________

Date: ______________________________