

**FUNDING AGREEMENT BETWEEN
THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY
AND CITY/COUNTY ASSOCIATION OF GOVERNMENTS
FOR A RAIN BARREL REBATE PROGRAM**

RECITALS

This Funding Agreement (Agreement) is entered into this 10 day of October, 2014 between the Bay Area Water Supply and Conservation Agency (BAWSCA) and City/County Association of Governments of San Mateo County (C/CAG) for the purpose of implementing a rain barrel rebate program to reduce stormwater runoff and facilitate water conservation (Program).

WHEREAS, BAWSCA administers conservation rebate programs; and

WHEREAS, BAWSCA's members (Participating Member Agencies) are water agencies that also desire to provide a voluntary rebate program, which encourages customers being served by such agency to conserve water resources by purchasing and installing rainwater harvesting barrels; and

WHEREAS, the Parties wish to facilitate payments of monetary rebates to customers being served by both BAWSCA and C/CAG who purchase rain barrels pursuant to the Program; and

WHEREAS, the Parties designate BAWSCA as the entity responsible for administering the Program on a day-to-day basis, including the paying out of rebate monies to customers; and

WHEREAS, each of the Parties desire to enter into this Agreement to set forth the rights and responsibilities of each Party, including the funding of the Program.

NOW THEREFORE, BAWSCA and C/CAG hereby agree as follows:

1. SCOPE OF SERVICES

The Parties will partner to offer the Program, which will be managed and administered by BAWSCA. The Program will provide rebates for the purchase and installation of rain barrels to collect and use rainwater from gutters and downspouts for lawns and gardens. The specific roles and responsibilities of each Party are set forth in Attachment (1), Rain Barrel Rebate Program: Roles and Responsibilities, which is attached hereto and incorporated herein.

2. TERM

This Agreement is effective Oct. 1, 2014 and shall expire on June 30, 2015, unless extended by mutual agreement by the Parties.

3. FUNDING AND METHOD OF PAYMENT

For customers in San Mateo County, C/CAG will provide a rebate of \$50 per rain barrel, which is funded as part of C/CAG's San Mateo Countywide Water Pollution Prevention Program up to a maximum amount of \$25,000 minus Program setup and administrative costs. BAWSCA member agencies electing to participate in the program (Participating Agencies) will provide an additional \$50 per rain barrel for a total rebate of up to \$100. BAWSCA member agencies outside of San Mateo County that elect to participate in the Program will provide a rebate amount of either \$50 or \$100 per rain barrel, to be selected by the Participating Agency.

C/CAG will reimburse BAWSCA for its costs associated with Program setup, including BAWSCA staff time, database setup, and marketing costs, up a maximum amount of \$5,000. C/CAG will also reimburse BAWSCA for Program administration costs, including BAWSCA staff time, database management, and rebate processing, up to a maximum amount of \$1,250.

BAWSCA will invoice C/CAG on a monthly basis for Program expenditures. C/CAG will submit payment for such invoices within 30 days of receipt.

BAWSCA shall update C/CAG on a monthly basis and provide documentation detailing Program expenditures, deposit account balance, and details on rebates issued, including numbers and locations of installed rain barrels.

All updates/invoices shall be delivered or mailed to C/CAG as follows:

City/County Association of Governments
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Matt Fabry

Subject to duly executed amendments, it is expressly understood and agreed that in no event will C/CAG's total funding commitment under this Agreement exceed \$25,000, unless revised in writing and approved by C/CAG and BAWSCA.

4. INDEMNITY

BAWSCA and C/CAG each agrees to mutually indemnify and defend at its own expense, including attorneys' fees, and hold the other, their officers, directors, employees and agents, harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act, error or omission, or willful misconduct of itself, its officers, directors, employees and agents acting pursuant to this Agreement. This section shall survive termination or expiration of this Agreement.

5. MODIFICATION

This Agreement may be modified or amended only by a written document signed by both parties.

6. DISPUTE RESOLUTION

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of executives, in a good faith attempt to resolve the dispute. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally.

7. NOTICE

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

If to Agency: Bay Area Water Supply & Conservation Agency
155 Bovet Road, Suite 650
San Mateo, CA 94402
Attention: Chief Executive Officer/General Manager

If to C/CAG: City/County Association of Governments
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Sandy Wong, Executive Director

Notification of a change in the name of the contact person shall be in writing.

8. WAIVER

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the party waiving the requirement. The waiver by either party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

9. INTERPRETATION

Section headings are solely for convenience and are not intended to affect the interpretation of the Agreement. The Agreement will be interpreted reasonably, not in favor of or against either party.

10. NO THIRD PARTY RIGHTS

The parties do not intend this Agreement to create rights in any third parties and nothing in this Agreement should be construed to do so.

11. SEVERABILITY

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event such provision will be severable and will not affect the validity or enforceability of any other provision.

12. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

13. ENTIRE AGREEMENT

This Agreement including any exhibits or attachments, constitutes the complete agreement between the parties and supersedes any prior agreements, promises, and understandings whether written or oral. This Agreement may be modified or amended only by written instrument signed by both parties.

14. ATTACHMENTS TO THIS AGREEMENT

(1) Rain Barrel Rebate Program: Roles and Responsibilities

(2) Bay Area Stormwater Management Agencies Association Rain Barrels and Cisterns – Stormwater Control for Small Projects

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

BAY AREA WATER SUPPLY & CONSERVATION AGENCY

By: *Nicole Samakulla* Date: 10/10, 2014

Title: CEO/GM

CITY/COUNTY ASSOCIATION OF GOVERNMENTS

By: *Margaret Fihant* Date: 10/3, 2014

Title: Chair