DATE: October 7, 2013

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Dan Stover, P.E., ASCE – Director, Public Works and Utilities

SUBJECT: Resolution Approving Sole Source Purchase of Ten Stream Level and Precipitation Gauges for Installation in the Petaluma Watershed for the Petaluma River Stream and Precipitation Gauges Project; Approving the CIP Project Budget Amendment; and Authorizing the City Manager to Execute the Agreement for Funding of the Project with the Sonoma County Water Agency.

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution Approving Sole Source Purchase of Ten Stream Level and Precipitation Gauges for Installation in the Petaluma Watershed for the Petaluma River Stream and Precipitation Gauges Project; Approving the Project Budget; and Authorizing the City Manager to Execute the Agreement for Funding of the Project with the Sonoma County Water Agency (SCWA).

BACKGROUND

In cooperation with SCWA, and USGS (US Geological Service), the City maintains and operates a series of stream level gauges as part of the regional flood alert system. These gauges send water level and precipitation data to the web based computer system to allow public safety managers to monitor in real time during periods of potential flooding. Several years ago, the City proposed a project to the SCWA Zone 2A Committee for the installation of up to 10 additional stream gauges within the Petaluma Watershed. In a previous fiscal year, SCWA approved the project for $81,000 to cover the cost of purchasing and installing four gauges. Earlier this calendar year, the Zone 2A committee approved an additional $77,400 to bring the funding total to $158,400 to cover both acquisition and installation costs of up to ten gauges. As a result of the additional funding, staff recommends amending the subject CIP project entitled, “Stream and Precipitation Gauges”, within the Surface Water CIP Projects section of the current Annual Budget.

The capital projects are authorized and funded through the SCWA Zone 2A Committee and requires execution of a formal Funding Agreement between the City and SCWA. A copy of the draft agreement is included as Attachment 3.

The proposed action meets Council Goal: “Plan for and implement priority capital projects as funding permits”.

Agenda Review:

City Attorney  Finance Director  City Manager
DISCUSSION

The selected locations for the ten new gauges will provide the most useful information for operating the City’s Flood Alert System, maintaining the City’s XP-SWMM (Surface Water Management Model) and assisting in the identification and prioritization of capital improvement projects to address and reduce the impacts of localized and regional flooding events. The City, County, or Sonoma County Water Agency owns the various properties for the proposed gauge locations, with one exception. The exception is along the Petaluma River, south of the confluence of Capri Creek, next to the SMART railroad trestle but outside of the SMART right-of-way. This location will require further investigation.

Petaluma Municipal Code Section 4.04.050 allows that formal purchasing procedures may be dispensed with when the commodity can be obtained from only one vendor. Staff recommends a sole source purchase of the gauges because the gauges should be of the same manufacturer and functionality as the existing gauges already in use. As well, keeping with the same make and model of gauges will simplify and support spare parts inventory, consistent maintenance, and assures compatibility with existing software and web-based reporting. Staff obtained a quotation to purchase the ten gauges for $55,149.75 from the company who built the City’s existing nine stream gauges. A Request for Bids is now being prepared to solicit construction services for the gauge installation at the locations indicated on Attachment 2.

The project is categorically exempt from CEQA, pursuant to Section 15330, New Construction of Small Structures, and the appropriate Notice of Exemption will be filed with the County Clerk upon approval of the Project.

FINANCIAL IMPACTS

The project does not impact any City accounts since it is 100% funded by the SCWA through Zone 2A. City staff will provide management and construction oversight services to complete the project within existing budgets for wages and benefits.

The amendment to the CIP project budget will be included among mid-year budget adjustments and is summarized below. The revised project budget also includes the increase in funding from SCWA from $81,000 to $158,400:

<table>
<thead>
<tr>
<th>FY 13-14 CIP Budget</th>
<th>Existing Budget ($1,000's)</th>
<th>Proposed Budget Amendment (1,000's)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning/Environmental</td>
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<td>Land &amp; Easements</td>
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<tr>
<td>Design</td>
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<tr>
<td>Contingency</td>
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<td></td>
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<tr>
<td>CIP Overheads</td>
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<td>5.0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>81.0</td>
<td>158.4</td>
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</table>
ATTACHMENTS

1. Resolution
2. Location Map
3. Draft Funding Agreement with Sonoma County Water Agency for Funding of the Petaluma River Stream Gauge Installation Project
RESOLUTION APPROVING SOLE SOURCE PURCHASE OF TEN STREAM LEVEL AND PRECIPITATION GAUGES FOR INSTALLATION IN THE PETALUMA WATERSHED FOR THE PETALUMA RIVER STREAM AND PRECIPITATION GAUGES AMENDMENT PROJECT; APPROVING THE CIP PROJECT BUDGET; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR FUNDING OF THE PROJECT WITH THE SONOMA COUNTY WATER AGENCY

WHEREAS, the City of Petaluma operates a Flood Alert System and maintains stream flow and rainfall data for the Petaluma Watershed; and

WHEREAS, the City of Petaluma property owners contribute to the Zone 2A funding for surface water maintenance and capital improvements within the Petaluma Watershed; and,

WHEREAS, the City has approved a capital improvement project in the amount of $81,000 for augment the existing stream flow and precipitation data collection system by the addition of four additional gauges; and

WHEREAS, the Zone 2A Committee has recommended approval of a revised project and associated budget to increase the number of new gauges from four to ten and increase funding to $158,400; and

WHEREAS, the City has received a price proposal from Hydrolinx for ten stream level and precipitation gauges for a total price with taxes and delivery of $55,149.75; and

WHEREAS, Petaluma Municipal Code Section 4.04.050 allows that formal purchasing procedures may be dispensed with when the commodity can be obtained from only one vendor; and

WHEREAS, the same company, Hydro Lynx, that manufactured the existing gauges should supply the new gauges to assure compatibility of use and interfacing with the existing computerized communication and reporting system and to allow efficiency in providing spare parts inventory and standardized maintenance practices; and

WHEREAS, the project has been found to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303, New Construction of Small Structures, more specifically installation of small new equipment and facilities in small structures.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Petaluma hereby:

A. Approves the sole source purchase of ten stream and precipitation gauges for installation in the Petaluma Watershed for the Petaluma River Stream and Precipitation Gauges Installation Project from Hydrolinx for a total price: $55,149.75; and
B. Approves the project budget as summarized in the staff memo, with no impact on City funds; and

C. Authorizes the City Manager to execute an agreement for funding the Project with the Sonoma County Water Agency substantially in accordance with the agreement entitled "Draft Agreement for Funding of Petaluma River Stream Gauge Installation Project," which draft agreement is incorporated into this resolution by reference, subject to further negotiation and revision as may be recommended by the City Attorney and approved by the City Manager.
DRAFT AGREEMENT FOR
FUNDING OF PETALUMA RIVER STREAM GAUGE INSTALLATION PROJECT

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

RECITALS

A. The Petaluma River Stream Gauge Installation Project ("Project") consists of installation of ten gauges to measure and record stream depth and precipitation, and appurtenances. Project is located in Petaluma River watershed within the city limits of Petaluma, or in the unincorporated area of Sonoma County.

B. City and Water Agency have evaluated the serious flood and storm damage, which occurs to existing residential and commercial structures within the Petaluma River watershed area in the City of Petaluma. Water Agency's Zone 2A Advisory Committee recommends that the Project be undertaken and expedited to help alleviate the potential damage to existing residential and commercial structures from flood or storm waters.

C. Estimated Project costs are shown on Attachment B. Attachment B is an integral part of this Agreement. City is requesting $158,400 from Water Agency's Zone 2A fund for the design and construction of the Project during the 2013-14 construction season.

D. City owns or will acquire, and is willing to retain ownership of, any property or easements wherein said Project will be constructed and is willing to operate and maintain said Project in perpetuity.

E. Water Agency and City do mutually desire to cooperate in the design and construction and financing of said Project.

F. City wishes to expedite design and construction of said Project.

G. City has prepared all appropriate environmental documents for the Project under the California Environmental Quality Act (CEQA). A Notice of Exemption Pursuant to Section 15303, Construction of Small Structures ("installation of small new equipment and facilities in small structures") was filed on ________________.

H. City has completed determination of locations of proposed stream and precipitation gauges, obtained quotation for purchase of gauges, and begun work toward solicitation of bids for installation of gauges.
AGREEMENT

City and Water Agency agree as follows:

1. **REQUITALS**
   The above recitals are true and correct.

2. **COORDINATION**
   2.1. City shall coordinate the work with Water Agency's Project Manager. Contact information:

<table>
<thead>
<tr>
<th>Water Agency</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager: Susan Hayden</td>
<td>Contact: Pamela Tuft</td>
</tr>
<tr>
<td>404 Aviation Boulevard</td>
<td>202 North McDowell Ave.</td>
</tr>
<tr>
<td>Santa Rosa, CA 95403-9019</td>
<td>Petaluma, CA 94954</td>
</tr>
<tr>
<td>Phone: 707-547-1937</td>
<td>Phone: 707-778-4514</td>
</tr>
<tr>
<td>Email: <a href="mailto:Susan.Haydon@scwa.ca.gov">Susan.Haydon@scwa.ca.gov</a></td>
<td>Email: <a href="mailto:PTUFT@ci.petaluma.ca.us">PTUFT@ci.petaluma.ca.us</a></td>
</tr>
</tbody>
</table>

3. **CITY'S RESPONSIBILITIES**
   City shall complete the following at its cost and expense, except to the extent of Water Agency funding provided for in Sections 4 and 5 below.

   3.1. **General**: City agrees to perform all work in accordance with the requirements of applicable federal, state, and local laws.

   3.2. **Environmental Documentation**: City shall be the Lead Agency for the Project under the requirements of the California Environmental Quality Act (CEQA) and shall prepare all appropriate environmental documents. City shall provide a copy of the draft environmental document to Water Agency during the public review process and a final copy within 30 calendar days of approval of the document.

   3.3. **Permits**: City shall obtain any permits that may be necessary from utilities or regulatory agencies for construction of the Project.

   3.4. **Right-of-Way**: City shall acquire any and all additional land or easements as necessary for the construction of the Project.

   3.5. **Design and Surveying**: City shall design the Project including all design, surveying, and construction staking.

   3.6. **Insurance Requirements and Indemnification Obligations**:
      A. **Insurance Requirements**:
         1) City shall maintain and shall require all of its contractors, consultants, and other agents to maintain, insurance as described in Attachment A. Evidence of insurance shall be submitted as specified in Attachment A.

      B. **Indemnification Obligation of City**:

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1) 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 Paragraph C 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 benefit acts, or other employee benefit acts.

C. Indemnification Obligation of City's Consultants and Contractors:

1) Consultant/Contractor 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 Consultant/Contractor, that arise out of, pertain to, or relate to Consultant's/Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant/Contractor agrees to provide a complete defense for any claim or action brought against Water Agency based upon a claim relating to Consultant's/Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's/Contractor's obligations under this Paragraph C 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 Consultant's/Contractor's expense, subject to Consultant's/Contractor'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 Consultant/Contractor or its agents, employees,
contractors, subcontractors, or invitees under workers’ compensation acts, disability benefits acts, or other employee benefit acts.

D. Documentation: City shall provide evidence of such insurance and indemnification to Water Agency in a form satisfactory to Water Agency.

3.7. **Title:** All title to all Project facilities constructed pursuant to this Agreement shall vest with City.

3.8. **Installation, Operation, and Maintenance:** City shall complete Project, accept ownership, and shall operate and maintain Project in perpetuity.

3.9. **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.

3.10. **Statement of Costs:** Within 60 days of completion of Project, or within 60 days of decision to not proceed with the Project, City shall submit to Water Agency a statement of complete accounting of City’s Project costs.

3.11. **Invoices:** City shall invoice Water Agency for costs authorized under this Agreement. Invoices submitted to Water Agency by City shall be clearly marked with “City of Petaluma, Funding of Petaluma River Stream Gauge Installation Project, Project/Tasks No. 7228-B2 and Account No. 673301-7228.”

3.12. **Report:** Prepare a report that includes the following:

A. Contents:
   i. Table of Contents
   ii. A detailed description of the work performed, including date(s) of installation and activation
   iii. A map of gauge locations
   iv. Other information as requested

B. First Draft: Prepare the report in draft form and submit to Water Agency for review and approval within 60 calendar days of completion of the Project. Water Agency will return 1 copy of the draft report to the City with comments or approval in writing.

C. Subsequent Draft(s): If Water Agency requests revisions, revise the draft report and resubmit 1 copy of the report for Water Agency approval.

D. Final Report: Submit the final approved report to Water Agency within 30 calendar days of Water Agency approval.

4. **WATER AGENCY’S RESPONSIBILITIES**

4.1. **Initial Payment:** Upon receipt of an invoice, Water Agency will deposit with City $56,000, which is to finance Project’s costs for purchase of ten stream gauges.

4.2. **Subsequent Payment:** Upon selection of a qualified sub-contractor, receipt of an invoice thereof, and receipt of evidence of insurance and indemnification
required in paragraph 3.6, Water Agency will deposit with City $102,400, which is to finance the remaining share of Project's costs.

5. ADDITIONAL REQUIREMENTS

5.1. Excess Costs: If the Project costs exceed the total amount authorized under this Agreement, City shall:
   A. fund Project costs in excess of the authorized amounts without additional contribution from Water Agency; or
   B. request additional funding from Water Agency. In such event, City shall submit a revised Project cost estimate to Water Agency's General Manager with a written request, including reasons for cost overruns.

Water Agency is under no obligation to approve such requests. If Water Agency's General Manager determines that the revised costs are reasonable and that additional funds are available in Water Agency's Zone 2A accounts, Water Agency may, in its discretion, amend this Agreement to increase Water Agency's contribution to Project pursuant to paragraph 5.2 below. If Water Agency's General Manager does not so determine, City shall proceed pursuant to paragraph A above.

5.2. Authority to Amend Agreement: Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of the agreement or significantly lengthen time schedules may be executed by the Water Agency's General Manager in a form approved by County Counsel.

5.3. Refund of Remaining Funds: If the Project cost accounting statement submitted under paragraph 3.10 of this Agreement demonstrates that Project costs are less than the amounts paid to City, City shall refund, difference to Water Agency within 30 calendar days of submitting said statement to Water Agency.

5.4. 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.

5.5. 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.
5.6. **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.

5.7. **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.

5.8. **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.

5.9. **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.

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

5.11. **Zone Liability:** Work under this Agreement is being performed on behalf of the residents of Sonoma County Water Agency’s Petaluma Zone 2A (“Zone”). City shall be paid exclusively from Zone funds. City agrees that City shall make no claim for compensation for City’s services against other funds available to Water Agency and City expressly waives any right to be compensated from other funds available to Water Agency. In addition, City acknowledges that West’s Annotated California Codes Water Code Appendix Chapter 53-8 provides that certain judgments or claims against Water Agency based on causes of action arising from Zone activities may be made only from funds of that Zone.