



EXPEDITED DRINKING WATER GRANT

AGREEMENT No. [ ] by and between

[RECIPIENT CAPS] [If necessary, identify the recipient's entity type and/or dba e.g., \_\_\_\_\_ is a general partnership doing business as X] ("Recipient")

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")

for the purpose of the

[PROJECT NO. and NAME] ("Project")

[insert or select statute/regulations & Board Resolution]

- [DW P1 Grant] Section 79724 of the Water Code and Resolution Nos. 2023-0006 and 2024-0029.
[DWP68 grant] Section 80140 of the Public Resources Code and Resolution Nos. 2023-0006 and 2024-0029.
[DW SB 200] Section 116766 of the Health and Safety Code and Resolution Nos. 2023-0006 and 2024-0028.
[other - tbd]

PROJECT FUNDING AMOUNT: \_\_\_\_\_

ESTIMATED REASONABLE PROJECT COST: \_\_\_\_\_

ELIGIBLE WORK START DATE: \_\_\_\_\_

ESTIMATED COMPLETION OF CONSTRUCTION DATE: \_\_\_\_\_

PROJECT COMPLETION DATE: \_\_\_\_\_

FINAL REIMBURSEMENT REQUEST DATE: \_\_\_\_\_

RECORDS RETENTION END DATE: [Project Completion Date + 36 years]

1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:

- EXHIBIT A – SCOPE OF WORK AND SCHEDULE
- EXHIBIT B – FUNDING PROVISIONS
- EXHIBIT C – GENERAL TERMS AND CONDITIONS
- EXHIBIT D – SPECIAL CONDITIONS

2. The following documents are also incorporated by reference, as well as any documents incorporated by reference in Exhibit D:

- the Final Plans & Specifications, [if DFA has it: dated \_\_\_\_\_] including any amendments approved by the Division, which are the basis for the construction contract to be awarded by the Recipient;
- the Drinking Water System Permit No. \_\_\_\_\_, and any amendments thereto;
- [If system has DW administrator] Administrator Order No. \_\_\_\_\_, and any amendments thereto;
- [other incorporated documents, if any]

3. Party Contacts during the term of this Agreement are:

State Water Board		[Recipient]	
Section:	Division of Financial Assistance		
Name:	[Name], Project Manager	Name:	[Name], [Title]
Address:	1001 I Street, _____ Floor	Address:	
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	
Phone:	(916) _____	Phone:	
Fax:	(916) _____	Fax:	
Email:	[pm email]@waterboards.ca.gov	Email:	

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division’s Deputy Director in addition to the Party Contacts.

4. Conditions precedent to this Agreement are set forth as follows:

- (a) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
- (b) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board’s counsel dated on or after the date that the Recipient signs this Agreement.

5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:

- (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.

- (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.
  - (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
  - (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.
6. This Agreement, and any amendments hereto, may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement, and any amendments hereto, either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.
7. The Recipient has reviewed and fully understands the provisions and requirements of this Agreement. The Recipient has reviewed and affirms the representations and warranties in this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**RECIPIENT:**

STATE WATER RESOURCES CONTROL BOARD:

By: \_\_\_\_\_  
Name: [Name]  
Title: [Title]

By: \_\_\_\_\_  
Name: Joe Karkoski  
Title: Deputy Director  
Division of Financial Assistance

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

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

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**EXHIBIT A – SCOPE OF WORK AND SCHEDULE**

A.1 PROJECT PURPOSE AND DESCRIPTION.

[INSERT A.1 FROM SCOPE OF WORK]

A.2 SCOPE OF WORK.

[INSERT A.2 FROM SCOPE OF WORK]

A.3 SIGNAGE.

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may include another agency’s required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



“Funding for this project has been provided in full or in part under the

- Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014 [DFA will modify]
- Proposition 68 – the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 [DFA will modify]
- [DFA will include if SB 200] Safe and Affordable Funding for Equity and Resiliency (SAFER) Drinking Water Program
- The Budget Act of 2021 [DFA will modify]

through an agreement with the State Water Resources Control Board.”

A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Division may adjust the dates in the “Estimated Due Date” column of this table, but “Critical Due Date” adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to the Project Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal.

The Recipient must substantially complete construction by the approved Estimated Completion of Construction date unless an extension is granted by the Division in writing. The Recipient must deliver any request for extension of the Estimated Completion of Construction Date no less than 30 days prior to the approved Estimated Completion of Construction date. Late requests may not be honored.

The Recipient must submit the Final Reimbursement Request prior to the Estimated Due Date for the Final Reimbursement Request or by any modified Estimated Due Date approved by the Division. The Recipient must deliver any request for extension of the Estimated Final Reimbursement Request Date no less than 30 days prior to the approved Estimated Final Reimbursement Request Date. Late requests may not be honored. The Estimated Final Reimbursement Request Date will not be extended beyond the critical Final Reimbursement Request Date without an amendment to this Agreement.

**[INSERT FROM SCOPE OF WORK]**

**A.5 PROGRESS REPORTS.**

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibits B and C. A progress report must contain the following information:

1. A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
2. Discussion of any delays experienced or anticipated in meeting the project schedule provided in Section A.4 and measures to meet the schedule;
3. A description of compliance with environmental requirements, including a discussion of the status of the Recipient's compliance with
  - a. the water-quality related mitigation measures in any Mitigation Monitoring and Reporting Program adopted for the Project, including, but not limited to, any mitigation measures included in the biological resources, geology/soils, hazards and hazardous materials, hydrology/water quality, and utilities/service systems resource categories to reduce the potential for significant water quality impacts; and
  - b. any permits issued for the Project that include water quality elements, including Clean Water Act, Section 401 Certification or Section 404 Permit, Lake and Streambed Alteration Agreement, and/or Rivers and Harbors Act, Section 10 Permit issued by the relevant state and federal agencies.
4. A listing of change orders including amount, description of work, and change in contract amount and schedule; and
5. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

**A.6 PROJECT COMPLETION REPORT.**

- (a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:
  - i. Description of the Project,
  - ii. Description of the water quality problem the Project sought to address,
  - iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
  - iv. Summary of compliance with applicable environmental requirements, including a discussion of the status of the Recipient's compliance with
    - a. any Mitigation Monitoring and Reporting Program adopted for the Project; and
    - b. any permits issued for the Project that include water quality elements, including Clean Water Act, Section 401 Certification or Section 404 Permit, Lake and Streambed Alteration Agreement, and/or Rivers and Harbors Act, Section 10 Permit issued by the relevant state and federal agencies.

- (b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold reimbursements under this Agreement or other agreements, and begin administrative proceedings.

**A.7 SPECIAL REPORTS. [SADW]**

The Recipient must submit information required for compliance with Greenhouse Gas Reduction Fund requirements, as required by the Division.

**A.7 FINAL PROJECT INSPECTION AND CERTIFICATION.**

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.

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## EXHIBIT B – FUNDING PROVISIONS

### B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement, and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

### B.2 RECIPIENT CONTRIBUTIONS.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

If the Recipient obtains funds for the Project from any third parties, the Recipient shall immediately notify the Division. The amount of this Agreement may be reduced to reflect such funds.

### B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

### B.4 BUDGET COSTS.

Estimated budget costs are contained in the Summary Project Cost Table below.

#### **[INSERT B.4 FROM SCOPE OF WORK]**

The Division's Final Budget Approval(s) and related Forms 259 and 260 will document a more detailed budget of eligible Project Costs and Project funding amounts. Construction of the Project may be completed in phases only with written approval of the Division. If construction proceeds under separate phases, the Recipient must submit a Final Budget Approval package and receive Final Budget Approval from the Division for each phase.

**[if funded by combo of grant sources, and Eligible Work Start Date is prior to one of the grant start dates]** Project Costs incurred prior to **[Prop 68] June 5, 2018/[SADW] July 24, 2019/[gf infrastructure-tbd]** are not eligible for the **Proposition 68 grant funding/Safe Affordable Drinking Water grant funding/[tbd]** under this Agreement. The Recipient must not request reimbursement of Project Costs incurred prior to **[match date above]** in excess of **[\$ amount available prior to date above]**.

**Use language only where co-funded and one appropriation ends before the Final Reimbursement Request Date (Or delete paragraph)**

The **[funding source (Proposition 68 grant funding/Safe Affordable Drinking Water grant funding/Budget Act of 2021)]** Project Funds, in the amount of **[amount] (\$\_\_\_)**, may not be available to reimburse Project Costs requested after March 1, **[year (DFA—confirm cutoff to request for specific funding source)]**. If the Recipient has not requested reimbursement of Project Costs incurred on or after **[(select whichever date is later) the Eligible Work Start Date/[Prop 68] June 5, 2018/[SADW] July 24, 2019/[gf infrastructure tbd]**, through submittal of complete, adequately supported, properly documented, and accurately addressed Reimbursement Requests in accordance with the Reimbursement Procedures at Exhibit B, in an amount of no less than **[amount] (\$\_\_\_)** by March 1, **[year]** the difference may revert to the State Water Board and may no longer be available under this Agreement, with no liability accruing to the State Water Board.



The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Reimbursement of costs under the Conditional Costs line item is not authorized without the Division's written approval. The Conditional Costs line item is for increased costs and unforeseen items, provided that the costs are eligible and consistent with the approved scope of work of this Agreement and are determined to be reasonable and necessary by the Division. The Recipient must contact the Project Manager with any requests to use the Conditional Costs line item; approval is subject to the Division's discretion. The Division will not approve the use of Conditional Costs for construction costs and construction change orders until after it has provided a Final Budget Approval for the Project.

#### B.5 LINE ITEM ADJUSTMENTS.

1. The Recipient may submit a request for an adjustment between line items of the budget in writing to the Project Manager for the Division's review and approval. Such adjustment may not increase or decrease the total Project Funding Amount. The Recipient shall submit a copy of the Agreement budget reflecting the requested changes and shall note proposed changes by striking out the original amount(s) followed with proposed change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item shall require a formal amendment. The Division may also propose budget adjustments.
2. The Division may adjust the funding amounts of the line items of the budget as follows, in accordance with any applicable rules. Under no circumstances may the sum of line items in the approved budget exceed the Project Funding Amount set forth on the Cover Page of this Agreement.
  - (a) The Division may adjust the budget for existing line items, other than the Contingency and Conditional Costs line items, by shifting funds from one line item to another. The sum of all line item adjustments approved by the Division for this Agreement must not exceed fifteen percent (15%) of the total Project Funding Amount. If the Division modifies the budget (i) at the time of the Division's Final Budget Approval(s), (ii) by amending the Agreement, or (iii) following the Recipient's submittal of its final Reimbursement Request, then any adjustments that were made prior to such modification of the budget shall not be counted in the calculation of the 15% limit.
  - (b) At the time of the Division's Final Budget Approval(s) and/or any amendments to the Agreement, the Division may adjust the amounts allocated to the line items of the budget at its discretion. Any adjustments at these times are not subject to the 15% limit in paragraph a.
  - (c) Following the Recipient's submittal of its final Reimbursement Request, the Division may adjust the amounts allocated to the line items of the budget at its discretion. Any adjustments at this time are not subject to the 15% limit in paragraph a.
3. No line item adjustment is authorized until the Division provides written approval for the adjustment to the Recipient. Any line item adjustments to the budget that are due to a change in scope of work will require an Agreement amendment.

#### B.6 REIMBURSEMENT PROCEDURE.

Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred planning and design allowance costs through

submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed, except that the Recipient may not acquire or request reimbursement of costs for materials, equipment, or land until after any required environmental review process is complete and the Division provides written notice that such items may be reimbursed under this Agreement. To be eligible for reimbursement, Project Costs, including any planning and design allowance costs, must have been incurred in compliance with all applicable requirements, including the state cross-cutting requirements listed in Exhibits C and D.

2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under this Agreement.
4. The Recipient shall not solicit construction bids or conduct any construction activities until the Division has provided written bid solicitation approval. The Division will not provide bid solicitation approval until after the Division completes its applicable review, which will include but not be limited to environmental review.
5. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of Reimbursement Request. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
7. The Recipient must not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
8. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

No Project construction shall proceed until after the Division has provided approval for construction to proceed. Construction costs incurred prior to the date that the Division provides approval to proceed are

not eligible for reimbursement. No disbursement for construction costs shall be provided until after the Division has provided a Final Budget Approval including the applicable costs.

#### B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement timely, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

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## EXHIBIT C – GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS 2019-NOV is posted at [https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/general\\_terms.html](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html) and replicated below:

1. DEFINITIONS. Unless otherwise specified in this Agreement, each capitalized term used in this Agreement has the following meaning:

- “Agreement” means this agreement, including all exhibits and attachments hereto.
- “Cover Page” means the front page of this Agreement.
- “Days” means calendar days unless otherwise expressly indicated.
- “Deputy Director” means the Deputy Director of the Division.
- “Division” means the Division of Financial Assistance of the State Water Board or any other division or unit of the State Water Board authorized to administer this Agreement.
- “Event of Default” means the occurrence of any of the following events:
  - a) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
  - b) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
  - c) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient’s property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient’s entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient’s existence, or any action in furtherance of any of the foregoing;
  - d) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or
  - e) Loss of the Recipient’s rights, licenses, permits, or privileges necessary for the Project, or the occurrence of any material restraint on the Recipient’s enterprise by a government agency or court order.
- “Final Reimbursement Request Date” means the date set forth as such on the Cover Page of this Agreement, after which date, no further reimbursements or disbursements may be requested.
- “Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year.
- “GAAP” means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its

successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

- “Material Obligation” means an obligation of the Recipient that is material to this transaction.
  - “Party Contact” means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Division staff set forth in Section 2 of this Agreement.
  - “Project” means the Project funded by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.
  - “Project Completion” means, as determined by the Division, that the Project is complete to the reasonable satisfaction of the Division.
  - “Project Costs” means the incurred costs of the Recipient which are eligible for funding under this Agreement, pursuant to applicable statutes, policy, regulations, or guidelines.
  - “Project Funding Amount” means the maximum amount payable under this Agreement, as set forth on the Cover Page.
  - “Project Funds” means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.
  - “Project Manager” means the person designated by the State Water Board to manage performance of this Agreement. The Project Manager is set forth on the Cover Page.
  - “Records Retention End Date” means the last date that the Recipient is obligated to maintain records related to this Agreement and is set forth on the Cover Page of this Agreement.
  - “Regional Water Quality Control Board” or “Regional Water Board” means the appropriate Regional Water Quality Control Board.
  - “Reimbursement Period” means the period during which Project Funds may be disbursed.
  - “Reimbursement Request” means the Recipient’s request for Project Funds from the State Water Board as set forth in Exhibit B.
  - “State” means State of California.
  - “State Water Board” means the State Water Resources Control Board.
  - “Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A for review and approval by the Division.
  - “Work Completion Date” means the date set forth on the Cover Page of this Agreement and is the last date on which Project Costs may be incurred under this Agreement.
  - “Year” means calendar year unless otherwise expressly indicated.
2. ACCESS, INSPECTION, AND PUBLIC RECORDS. The Recipient must ensure that the State Water Board, the State Auditor, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times through the Records Retention End Date or

useful life of the Project, whichever is longer. The Recipient acknowledges that, except for a subset of information regarding archaeological records and personally identifiable information, the Project records and locations may be public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, Reimbursement Requests, and supporting documentation submitted hereunder.

3. **ACCOUNTING AND AUDITING STANDARDS; FINANCIAL MANAGEMENT SYSTEMS.** The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets. Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
  - (a) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (b) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Project Funds received under this Agreement;
  - (c) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Project Funds disbursed under this Agreement;
  - (d) Establish an accounting system which will accurately depict final total costs of the Project if authorized under this Agreement;
  - (e) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (f) If the Recipient uses its own employees, equipment, or resources for any phase of the Project, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
4. **AMENDMENT.** No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee and approved as required.
5. **ASSIGNABILITY.** This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board. Amendment of the Agreement may be required.
6. **AUDIT.** The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of State or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division. The Recipient must return, or ensure the return of, any audit disallowances within 30 days.
7. **BONDING.** Where construction contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.
8. **COMPETITIVE BIDDING.** Recipient must adhere to any applicable State law or local ordinance for competitive bidding and applicable labor laws. If Recipient is a private entity, any construction contracts related in any way to the Project must be let by competitive bid procedures which assure award of such contracts to the lowest responsive and responsible bidders. Recipient must not award a construction contract until a summary of bids and identification of the selected lowest responsible

bidder is submitted to and approved in writing by the Division. Recipient must provide a full explanation if Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.

9. **COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REQUIREMENTS.** The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements and with provisions of the adopted environmental mitigation plan, if any, for the useful life of the Project.
10. **COMPUTER SOFTWARE.** The Recipient certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
11. **CONFLICT OF INTEREST.** The Recipient certifies that it, its owners, officers, directors, agents, representatives, and employees are in compliance with applicable State and federal conflict of interest laws and will remain in compliance for the useful life of the Project. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances. Public entities are required to have adopted conflict of interest codes and may be required to provide documentation of those codes to the Division.
12. **DATA MANAGEMENT.** The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.
13. **DEBARRED, DISQUALIFIED, OR EXCLUDED CONTRACTORS.** The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/fwa/dbp.shtml](http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml)
14. **DRUG-FREE WORKPLACE.** The Recipient certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act (Gov. Code. §§ 8350-8357). The Recipient shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions to be taken against employees for violations of the prohibition. The Recipient shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations. The Recipient shall provide that every employee who works on the Project receives a copy of the Recipient's drug-free workplace policy statement and agrees to abide by the terms of the statement as a condition of employment on the Project.
15. **ENVIRONMENTAL CLEARANCE.** No work that is subject to California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA) may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional

mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement. If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

16. **FINAL REIMBURSEMENT REQUEST.** The Recipient agrees to ensure that its final Reimbursement Request is received by the Division no later than the Final Reimbursement Request Date, unless prior approval has been granted by the Division. If the final Reimbursement Request is not received timely, the undisbursed balance of this Agreement may be deobligated.
17. **FRAUD AND MISUSE OF PUBLIC FUNDS.** All requests for disbursement must be accurate and signed by the Recipient or its Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.
18. **FUNDING CONTINGENCY.** The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement. The State Water Board's obligation to disburse funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.
19. **GOVERNING LAW.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
20. **RECIPIENT'S SHARE.** The Recipient agrees that it will provide for the payment of its full share, if any share is required, of Project Costs and that all costs connected with the Project will be timely paid by the Recipient.



21. **INDEMNIFICATION AND STATE REVIEWS.** The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Parties. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.
22. **INDEPENDENT ACTOR.** The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.
23. **INSPECTION.** Throughout the useful life of the Project, the State Water Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.
24. **INTEGRATION.** This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.
25. **LIENS.** The Recipient must not make any pledge of or place any lien on the Project or Project assets except upon consent of the Division.
26. **NO DISCRIMINATION.** The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project. If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of

nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property. The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b). The Recipient's obligations under this section shall survive the term of this Agreement. During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status. The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

27. **NO THIRD-PARTY RIGHTS.** This Agreement creates no rights in and grants no remedies to any third party as a beneficiary of this Agreement.
28. **NO OBLIGATION OF THE STATE.** Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.
29. **NON-WAIVER.** Nothing in this Agreement shall affect or impair the Recipient's obligation to undertake work under this Agreement or shall affect or impair the right of the State Water Board to bring suit to enforce such work. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement. Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
30. **OTHER FUNDING SOURCES; INCOME RESTRICTIONS.** If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's contribution to Project costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board. The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient as related to this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.
31. **PERMITS AND AUTHORIZATIONS.** Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction or implementation begins.

Any contractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by

the State Water Board's Project Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Project Manager.

32. **PREVAILING WAGES.** If applicable, the Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. If applicable, the Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the applicable prevailing wage provisions of the State Labor Code are being met. Division of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
33. **PRIOR COSTS.** No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
34. **PROFESSIONALS.** The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
35. **RECORDS, INSPECTION, AUDITS, AND INTERVIEWS; RECORDS RETENTION.** The Recipient must maintain separate books, records and other material relative to the Project and retain such books, records, subcontracts, and other material until at least the Records Retention End Date set forth on the Cover Page of this Agreement. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Department of Finance, the California State Auditor, the Bureau of State Audits, or any authorized representatives of the aforementioned, including federal funding agencies and their auditors, if any. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.
36. **RELATED LITIGATION.** Under no circumstances may the Recipient use funds from any reimbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.
37. **REMEDIES.** The State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy. Any dispute of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the procedures provided to the Recipient under this Agreement.
38. **REPORTS - AS NEEDED.** The Recipient must provide expeditiously any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the State or federal government.

39. **RESPONSIBILITY FOR WORK.** The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project, including, but not limited to, payment disputes with contractors and subcontractors. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.
40. **RIGHTS IN DATA.** The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. The Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
41. **STATE WATER BOARD ACTION; COSTS AND ATTORNEY FEES.** In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.
42. **STATUS QUO.** If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights, and remedies as if no such action had been brought.
43. **TERMINATION, IMMEDIATE REPAYMENT, AND INTEREST:** This Agreement may be terminated by written notice at any time, at the option of the State Water Board, if:
- a. the Recipient has received funds as a result of a material misrepresentation in the funding application or other submitted document; or
  - b. upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board.
- In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of Project Funds disbursed to the Recipient prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.
44. **TIMING.** Time is of the essence. The Recipient must expeditiously proceed with and complete the Project. Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.
45. **TRAVEL AND PER DIEM.** No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. No work or travel outside the United States of America is authorized. Failure to comply with this restriction may constitute an Event of Default and result in termination of this Agreement. Any reimbursement for necessary travel and per diem shall be set pursuant to and at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx> as of the date costs are incurred by the Recipient.

46. UNDISBURSED FUNDS. The Recipient is not entitled to interest earned on undisbursed funds.
47. UNENFORCEABLE PROVISION; SEVERABILITY. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
48. UNION ACTIVITIES: The Recipient hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement. The Recipient certifies that none of the Project Funds will be used to assist, promote, or deter union organizing. If the Recipient incurs costs or makes expenditures to assist, promote, or deter union organizing, the Recipient will maintain records sufficient to show that no reimbursement from Project Funds has been sought for these costs and the Recipient shall provide those records to the Attorney General upon request.
49. VENUE. Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.
50. WAIVER AND RIGHTS OF THE STATE WATER BOARD. Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
51. WATER CONSERVATION AND EFFICIENCY PROGRAMS: The Recipient acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of this Agreement. A web link with examples of water conservation and efficiency programs is available at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/conservation.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml).
52. WATER DIVERSION AND USE: To the extent applicable, the Recipient has complied with, and shall continue to comply with, the requirements of Water Code, division 2, part 5.1, section 5100 et seq. for filing statements of water diversion and use.
53. WITHHOLDING OF DISBURSEMENTS AND REIMBURSEMENTS. Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:
- a) Failure of the Recipient to maintain reasonable progress on the Project as determined by the Division;
  - b) Commencement of litigation or a judicial or administrative proceeding related to the Project, or Recipient that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
  - c) Any investigation by State, local, or federal investigators or auditors, or a grand jury, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
  - d) A material adverse change in the condition of the Recipient, or the Project, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
  - e) The Recipient's material violation of, or threat to materially violate, any provision of this Agreement;
  - f) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents directly or indirectly regarding the Project;

- g) An event requiring notice under this Agreement; or
- h) An Event of Default or an event that the Division determines may become an Event of Default.

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## EXHIBIT D – SPECIAL CONDITIONS

### D.1 DEFINITIONS.

(a) Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:

- Work Completion
- Work Completion Date.

(b) Each capitalized term used in this Agreement has the following meaning:

- "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
- "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorized representative resolution that designates the authorized representative by title.
- "Completion of Construction" means that the work of building and erection of the Project is substantially complete to the reasonable satisfaction of the Division.
- "District Office" means District Office of the Division of Drinking Water of the State Water Board.
- "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
- "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
- "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
- "Estimated Completion of Construction Date" means the estimated due date for Completion of Construction, as determined by the Division after consultation with the Recipient, and is established on the Cover Page of this Agreement.
- "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
  - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
  - b) Failure to operate the System or the Project, unless the Division has given its approval for such non-operation.
  - c) The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption, or that the Division determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
  - d) If the Recipient is a member of a joint powers authority, the occurrence of a material breach or event of default under any agreement to which the joint powers authority is a party, relevant to the System or the Revenues, that the Division determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
  - e) Failure to obtain and keep the necessary water rights for the Useful Life of the Project.
- "Final Budget Approval (FBA)" means the Division's approval of the final budget for the Project, or phase of the Project, as set forth in Exhibit B.
- "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not

directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

- "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
- "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
- "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.
- "Project Completion Date" means the date that the Project shall be complete to the reasonable satisfaction of the Division, and is established on the Cover Page of this Agreement.
- "Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.
- "System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, or its successor agency, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.
- "Useful Life" means the economically useful life of the Project beginning at Project Completion, which must be at least 20 years.

## D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

The Recipient represents, warrants, and covenants each of the following:

- (a) **[for PUC-regulated utilities or mutual water companies]** Public Purpose. The Recipient represents and warrants that the Project has a clear and definite public purpose, and will benefit customers of the System, not the investors.
- (b) The Recipient has not made any untrue statement of a material fact in its application for this financial assistance or omitted to state in its application a material fact that makes the statements in its application not misleading.



- (c) The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
- (d) The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date of execution of this Agreement by the Recipient, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date of execution of this Agreement by the Recipient.
- (e) Except as set forth in this paragraph, there are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect, or if resolved unfavorably to the Recipient, would materially affect, the financial condition or operations of the Recipient, the Revenues, and/or the Project. **[If there are any actions, claims, investigations, etc., discuss with the Division.]**
- (f) There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
- (g) The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
- (h) Any financial statements or other financial documentation of Recipient delivered or to be delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are or will be materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been or will be prepared in accordance with GAAP. Since the date(s) of any financial statements or other financial documentation previously provided to the State Water Board, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.
- (i) The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
- (j) The Recipient has no conflicting or Material Obligations. **[If there are any Material Obligations, discuss with the Division.]**
- (k) The Recipient and its principals, contractors, and subcontractors, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized.

### D.3 ACKNOWLEDGEMENTS.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

- "Funding for this project has been provided in full or in part under

- o [Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014] [and]
- o [Proposition 68 – the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018]
- o [SADW] the Safe and Affordable Funding for Equity and Resiliency (SAFER) Drinking Water Program
- o [Infrastructure grant] the Budget Act of [DFA will insert year]

through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

#### D.4 RATES, FEES, AND CHARGES.

The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

#### D.5 PROPERTY RIGHTS AND WATER RIGHTS.

- (a) Unless otherwise previously disclosed to the Division and described in the legal opinion accompanying this Agreement, the Recipient (1) has sufficient real or personal property and access rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, and (2) possesses all water rights necessary for this Project and the continued operation of the System. The Recipient has disclosed to the State Water Board all proceedings, actions, or offers of which the Recipient has knowledge or belief that may in any way affect the Recipient’s ability to access or legally possess all of the property necessary for the purpose of this Agreement, including any proceedings, actions, or offers to lease, purchase, or acquire by eminent domain any of the real or personal property related to or necessary for the Project.
- (b) If the Recipient does not have sufficient property, access, or water rights as described in paragraph a, above at the time of execution of this Agreement, then prior to the Division’s bid solicitation approval, construction activities, and any reimbursement for construction, the Recipient shall provide evidence satisfactory to the Division that the Recipient has obtained the necessary property rights and water rights, including a legal opinion satisfactory to the State Water Board’s counsel that the Recipient has sufficient property rights in the Project property for the purposes contemplated under this Agreement as well as sufficient water rights for the Project and the continued operation of the System.

#### D.6 CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE.

The Recipient shall comply with all applicable laws and regulations for the Project, including CEQA. No bid solicitation or construction may proceed unless and until the State Water Board completes its own CEQA findings and gives authorization to proceed with such activities. THE STATE WATER BOARD EXPRESSLY WITHHOLDS APPROVAL OF ANY CONSTRUCTION OR CONSTRUCTION-RELATED ELEMENT OF THE PROJECT AND THE RELEASE OF FUNDS ASSOCIATED WITH THAT CONSTRUCTION OR CONSTRUCTION-RELATED ELEMENT OF THE PROJECT UNTIL COMPLETION OF THE CEQA PROCESS, INCLUDING THE STATE WATER BOARD MAKING ITS

OWN FINDINGS UNDER CEQA IF APPLICABLE. PROCEEDING WITH THE BID SOLICITATION PROCESS, EQUIPMENT PROCUREMENT, PURCHASE OF LAND OR OTHER PROPERTY RIGHTS, AND/OR CONSTRUCTION PRIOR TO RECEIVING AUTHORIZATION FROM THE DIVISION MAY RENDER THE PROJECT INELIGIBLE FOR FUNDING AND MAY BE GROUNDS FOR IMMEDIATE TERMINATION OF THE AGREEMENT. Any funds in the preliminary award notification or this Agreement linked to the construction element of the Project are for encumbrance purposes only and will be reviewed after the State Water Board makes any necessary CEQA findings. The appropriate environmental review under CEQA must be complete before the State Water Board determines whether to approve funding for construction of the Project or for any site acquisition (purchase of land, etc.) associated with the Project.

If the Recipient is the CEQA lead agency for the project, when the CEQA review process is complete, the Recipient shall file a CEQA Notice of Determination or Notice of Exemption for the Project at both the applicable County Clerk's office and at the Governor's Office of Planning and Research, State Clearinghouse.

#### D.7 TECHNICAL SPECIAL CONDITIONS.

The Recipient must comply with all requirements specified in the Division's written bid solicitation approval(s) or Final Budget Approval(s) for the Project, if any. Any such requirements are incorporated into this Agreement by reference.

[DFA will modify Section D.7 to incorporate technical special conditions based on the project type and other project-specific factors. ]

#### D.8 ENVIRONMENTAL SPECIAL CONDITIONS.

- (a) The Recipient shall not purchase land or equipment specific to the Project, solicit bids for construction of the Project, award a construction contract for the Project, or commence construction unless and until environmental review of the construction project is complete, including all of the following.
  - i. The CEQA lead agency must have either (1) completed the appropriate CEQA document (negative declaration, mitigated negative declaration, or environmental impact report, etc.) for the Project and filed a Notice of Determination (NOD) with the appropriate County Clerk and with the Governor's Office of Planning and Research, State Clearinghouse, or (2) determined that the Project is exempt from CEQA, and filed a Notice of Exemption (NOE) with the appropriate County Clerk and with the Governor's Office of Planning and Research, State Clearinghouse.
  - ii. The Recipient must have provided all information requested by the Division to complete the Division's environmental review of the Project.
  - iii. The State Water Board must have completed its CEQA review and filed either an NOD or an NOE with the Governor's Office of Planning and Research, State Clearinghouse, for the construction of the Project.
- (b) The Mitigation Monitoring and Reporting Program adopted by the CEQA lead agency for the Project, if any, pursuant to the CEQA, and approved by the Division, is incorporated by reference, and the Recipient shall comply with the conditions and recommendations therein and shall implement all mitigation measures therein.
- (c) The Recipient shall make no changes in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval(s) from the State Water Board.

#### D.9 FINANCIAL SPECIAL CONDITIONS.

- (a) The Recipient shall provide all information requested by the Division to complete the financial review of the Project prior to the Division providing bid solicitation approval.

- (b) The Recipient shall not award a construction contract for the Project or commence construction unless and until the Division provides a Final Budget Approval, and the following condition is met.
- i. If the Division determines that Recipient's water rates are insufficient to cover the operation and maintenance of the Recipient's water system, including the Project, the Recipient must do the following:
    - Complete a water rate study that is approved by the Division.
    - Adopt water rates satisfactory to the Division prior to Final Budget Approval and disbursement of construction funds. Satisfactory rates must be in effect prior to Completion of Construction. If the Project is bid in phases with Division approval, the Recipient must adopt water rates satisfactory to the Division prior to the first Final Budget Approval, and prior to disbursement of any construction funds.
    - Provide a supplementary opinion of counsel satisfactory to the Division's counsel affirming that the water rates were properly adopted.
  - (c) [not for schools] If requested by the Division, the Recipient shall submit documentation that the Recipient has established a separate enterprise fund for water service, which shall be used solely for System Revenues and System expenses. The Division may withhold disbursements at its discretion until documentation satisfactory to the Division is submitted.
  - (d) If requested by the Division, the Recipient shall submit audited financial reports on an annual basis, by December 31 of each year, until completion of the Project. The Division may withhold disbursements at its discretion until reports satisfactory to the Division are submitted.

#### D.10 SPECIAL COMPLIANCE CONDITIONS.

- (a) The Recipient shall not solicit construction bids or conduct any construction activities until the Recipient has requested approval from the Division using the procedures specified by the Division, and the Division has provided approval in writing.
- (b) The Recipient shall submit the following documents and information to the Project Manager:
- i. A copy of the Recipient's adopted Conflict of Interest Code, including the designated positions required to file a Statement of Economic Interests (Form 700), as well as other documentation, satisfactory to the Division demonstrating the Recipient's compliance with section 11 of Exhibit C of this Agreement. No Project Funds will be disbursed under this Agreement until the Recipient satisfies this requirement unless specifically authorized by the Division.
  - ii. Copies of all consultant services contracts related to this Project and documentation demonstrating the Recipient's procurement processes for such contracts. Procurement processes for consultant services contracts (e.g., professional engineering, environmental, land surveying, project management) shall be based upon demonstrated competence and qualifications and shall ensure that rates are reasonable and consistent with state laws regarding contracting for professional services. No Project Funds will be disbursed under this Agreement for such contracts until the Recipient complies with this requirement to the satisfaction of the Division with respect to the requested costs, unless specifically authorized by the Division.
  - iii. Documentation of the policies and/or procedures Recipient uses when reviewing and approving consultant, contractor, and subcontractor invoices. Such policies and/or procedures must ensure that (1) consultant, contractor, and/or subcontractor invoices provide sufficient documentation of the work performed; and (2) the consultant, contractor, and/or subcontractor costs incurred are eligible and are consistent with the respective project scope of work, budget, and actual work completed. No Project Funds will be disbursed under this Agreement until the Recipient complies with this requirement to the satisfaction of the Division with respect to the requested costs, unless specifically authorized by the Division.

The Division's review of the documents and information referenced above, or any other documents submitted in relation to this Project, does not relieve the Recipient from responsibility for ensuring that its procedures comply with all applicable laws, rules, guidelines, regulations, and requirements.

#### D.11 FUNDS RELATED TO CONTAMINATION.

- (a) As a condition precedent to this Agreement, the Recipient shall (i) notify the Division of any demands, including but not limited to litigation and insurance claims, made by the Recipient against third parties for reimbursement of costs, monetary damages, or other relief, related to drinking water contamination, including but not limited to contamination by 1,2,3-trichloropropane (1,2,3-TCP), perfluoroalkyl and polyfluoroalkyl substances (PFAS), or other contaminants (Contamination-Related Demands); (ii) notify the Division of any payments or funds received by the Recipient, agreements, settlements, and court or administrative orders that have arisen out of or are related to drinking water contamination or Contamination-Related Demands (Contamination-Related Payments, Agreements, or Orders); and (iii) to the extent requested by the Division or the Division's counsel, provide information and access to documentation of any Contamination-Related Demands and Contamination-Related Payments, Agreements, or Orders.
- (b) After execution of this Agreement, the Recipient shall promptly notify the Division of the new occurrence of any Contamination-Related Demands and Contamination-Related Payments, Agreements, or Orders. Upon request, the Recipient shall promptly provide information and access to documents to the extent requested by the Division or the Division's counsel.
- (c) The Recipient shall not spend or allocate any funds received as a result of Contamination-Related Demands or Contamination-Related Payments, Agreements, or Orders (Recovered Funds) unless the Recipient has obtained written consent for the use of such Recovered Funds from the Division. At the discretion of the Division, the Project Funding Amount of this Agreement may be reduced, disbursements may be withheld, and the Agreement may be rescinded, to offset the amount of any Recovered Funds or any Contamination-Related Payments, Agreements, or Orders. Upon demand by the Division, the Recipient shall return Project Funds to offset any Recovered Funds or Contamination-Related Payments, Agreements, or Orders within thirty (30) days or within another time period approved by the Division. The Recipient shall ensure that no duplicative reimbursements of costs occur under this Agreement and any past or future Recovered Funds or Contamination-Related Payments, Agreements, or Orders. Noncompliance with this Funds Related to Contamination section shall be an Event of Default.
- (d) If the Recipient is not regulated by the California Public Utilities Commission (CPUC), the provisions of this paragraph (d) shall apply. If the Division provides written consent, the Recipient may place Recovered Funds into a restricted reserve account to be used for one of the following purposes but only if such purpose is approved by the Division: (1) as co-funding or match funding for the Project, (2) for a capital improvement project other than the Project that addresses the associated drinking water contamination, (3) for Operations and Maintenance Costs related to addressing the associated drinking water contamination, (4) for Operations and Maintenance Costs of the System in general, or (5) for other purposes approved by the Division. To the extent requested by the Division, the Recipient shall provide access to (i) documentation satisfactory to the Division showing the total amount of Recovered Funds deposited into a restricted reserve account prior to the start of construction of the Project and (ii) documentation thereafter of any Recovered Funds that Recipient receives and places into such an account.
- (e) If the Recipient is regulated by the CPUC, paragraph (d) shall not apply, and the Recipient shall comply with all applicable CPUC rules with respect to the Recovered Funds and shall provide to the Division copies of all notices, applications, and any other documents filed with the CPUC, and any documents issued by the CPUC, within 10 days of submittal or issuance as applicable, with respect to the receipt and use of Recovered Funds and with respect to any proposed transfer of any assets funded by Recovered Funds.

#### D.12 APPOINTMENT OF RECEIVER OR CUSTODIAN.

Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.

#### D.13 RETURN OF FUNDS.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, to immediately return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement and pay interest at the highest legal rate on all of the foregoing.

#### D.14 DAMAGES FOR BREACH OF TAX-EXEMPT STATUS. [P1/P68 with public entity recipients]

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

#### D.15 UCC REMEDIES. [for private entities where Credit has recommended UCC lien]

Upon an Event of Default, the State Water Board shall have, in addition to all other rights and remedies, the remedies of a secured party under Division 9 of the California Commercial Code.

#### D.16 OPERATION AND MAINTENANCE.

The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the Project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

#### D.17 INSURANCE.

The Recipient will procure and maintain or cause to be maintained insurance on the System and Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System/Project) as are usually covered in connection with systems similar to the System/Project. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System/Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System/Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System and Project must be free and clear of all claims and liens.

Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

D.18 CONTINUOUS USE OF PROJECT; NO LEASE, SALE, TRANSFER OF OWNERSHIP, OR DISPOSAL OF PROJECT.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

D.19 NOTICE.

Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- (a) **[If State Water Board is not CEQA lead (typically public entity Recipients)]** Within 24 hours, the Recipient must notify the Project Manager by phone and by email and the Division by phone at (916) 327-9978 and by email, [CleanWaterSRF@waterboards.ca.gov](mailto:CleanWaterSRF@waterboards.ca.gov), of any discovery of any potential tribal cultural resource, archaeological or historical resource, or human remains in the Project area. If there are any applicable provisions of a mitigation, monitoring and reporting program adopted for the project, the Recipient shall comply with such provisions. The Recipient must coordinate with the Division to determine the appropriate course of action necessary to mitigate potential impacts. In the event of the discovery of human remains during construction of the Project, the Recipient shall cease construction and take other action required by any applicable laws, which may include but are not limited to Health and Safety Code, section 7050.5 and Public Resources Code, section 5097.98.
- [If State Water Board is CEQA lead (most private entity Recipients)]** Within 24 hours, the Recipient must notify (1) the Project Manager by phone and by email, (2) the Division's Senior Cultural Resources Officer, [Lisa.Machado@waterboards.ca.gov](mailto:Lisa.Machado@waterboards.ca.gov) or (916) 323-0626), and (3) the Division by phone at (916) 327-9978 and by email to [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov), of any discovery of any potential tribal cultural resource, archaeological or historical resource, or human remains in the Project area. Should a potential tribal cultural resource or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division. If there are any applicable provisions of a mitigation, monitoring and reporting program adopted for the Project, the Recipient shall comply with such provisions. In the event of the discovery of human remains during construction of the Project, the Recipient shall cease construction and take other action required by any applicable laws, which may include but are not limited to Health and Safety Code, section 7050.5 and Public Resources Code, section 5097.98.
- (b) **[for private DW systems regulated by CPUC]** Within three (3) days, if the Recipient is regulated by the California Public Utilities Commission, the Recipient must submit to the State Water Board by certified mail and by email to the Project Manager and [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov) copies of any and all documents filed with the California Public Utilities Commission, including but not limited to applications, petitions, and investigations.

- (c) The Recipient must notify the Division and Party Contacts promptly of the occurrence of any of the following events:
- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
  - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
  - iii. Loss, theft, damage, or impairment to Project;
  - iv. Events of Default, except as otherwise set forth in this section;
  - v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
  - vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence, or any judgment or court order relating to such litigation that has a significant effect on the Project or the System;
  - vii. Consideration of dissolution, or disincorporation;
  - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
  - ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
  - x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
  - xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
  - xii. Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - xiii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act.
  - xiv. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
  - xv. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
  - xvi. Any event requiring notice to the Division pursuant to any other provision of this Agreement;



- xvii. The award of the prime construction contract for the Project; and the initiation of construction of the Project; and
- xviii. Completion of Construction, and Project Completion.

#### D.20 FRAUD, WASTE, AND ABUSE.

The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to Reimbursement Requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in an administrative action by the State Water Board and/or referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in any submittal may be subject to a civil penalty, criminal fine, or imprisonment. (Wat. Code, § 13490 et seq.)

#### D.21 DISPUTES.

The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

#### D.22 EXECUTIVE ORDER N-6-22 — RUSSIAN SANCTIONS.

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State Water Board determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State Water Board shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State Water Board.

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia's actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and->

country-information/ukraine-russia-related-sanctions). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

For Recipients with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, reporting requirements include, but are not limited to, information related to steps taken in response to Russia's actions in Ukraine, including but not limited to:

1. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
3. Direct support to the government and people of Ukraine.

#### D.23 STATE CROSS-CUTTERS.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following with respect to all Project Costs for the term of this Agreement:

- The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.

- The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
- Regulations in Division 4 of Title 22 of the California Code of Regulations, including but not limited to California Waterworks Standards in Chapter 16, and Lead and Copper regulations in Chapter 17.5.

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