
PUBLIC BEACH SAFETY GRANT PROGRAM

CITY AND COUNTY OF SAN FRANCISCO

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



MONITORING GRANT

AGREEMENT NO. SWRCB0000000000D1914110

GRANT AMOUNT: \$87,675

ELIGIBLE WORK START DATE: JULY 1, 2019
WORK COMPLETION DATE: JUNE 30, 2022
FINAL DISBURSEMENT REQUEST DATE: JULY 31, 2022
RECORDS RETENTION END DATE: JUNE 30, 2029

AGREEMENT

1. AUTHORITY.

The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to Section 13160 and 13260(d)(2) of the Water Code, Sections 115880, 115885, and 115915 of the Health and Safety Code, and Resolution No. 2016-0026.

2. INTENTION.

- (a) The Recipient desires to receive financial assistance for and undertake work required for the beach monitoring Project according to the terms and conditions set forth in this Agreement.
- (b) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement.

3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

In consideration of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement.

- (a) The State Water Board hereby makes a grant to the Recipient in accordance with the provisions of this Agreement.
- (b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following: The Recipient must deliver to the Division a resolution authorizing this Agreement.
- (c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Records Retention End Date.
- (d) This Agreement includes the following exhibits and attachments thereto:
 - EXHIBIT A – SCOPE OF WORK
 - EXHIBIT B – FUNDING TERMS
 - EXHIBIT C – GENERAL AND PROGRAMMATIC TERMS AND CONDITIONS
- (e) This Agreement includes the following documents incorporated by reference: the WDPF requirements found at Water Code sections 13260-13261 and 13269, and the regulations promulgated thereunder.

4. PARTY CONTACTS

The Party Contacts during the term of this Agreement are:

State Water Board		City and County of San Francisco	
Section:	Division of Water Quality		
Name:	Karen Black, Grant Manager	Name:	Corey Chrisman, Project Director
Address:	1001 I Street, 15 th Floor	Address:	1390 Market Street, Suite 210
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	San Francisco, CA 94102
Phone:	(916) 341-6899	Phone:	(415) 252-3849
Fax:	(916) 341-5808	Fax:	n/a
Email:	Karen.Black@waterboards.ca.gov	Email:	Corey.chrisman@sfdph.org

Direct inquiries to:

State Water Board		City and County of San Francisco	
Section:	Division of Financial Assistance		
Name:	Melissa Miller, Program Analyst	Name:	June Weintraub, Grant Contact
Address:	1001 I Street, 17 th Floor	Address:	1390 Market Street, Suite 210
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	San Francisco, CA 94102
Phone:	(916) 993-3872	Phone:	(415) 252-3973
Fax:	(916) 341-5296	Fax:	(415) 252-3894
Email:	Melissa.Miller@waterboards.ca.gov	Email:	June.Weintraub@sfdph.org

The Recipient may change its Project Director upon written notice to the Grant Manager, which notice shall be accompanied by authorization from the Recipient’s Authorized Representative. The State Water Board will notify the Project Director of any changes to its Party Contacts.

While the foregoing are contacts for day-to-day communications regarding Project work, the Recipient shall provide official communications and events of Notice as set forth in Exhibit C to the Division’s Deputy Director.

5. DEFINITIONS.

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

“Additional Payments” means the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

“Agreement” means this agreement, including all exhibits and attachments hereto.

“Annual Disbursement Request Deadline” means 30 days after the end of the Fiscal Year, after which date, no further Project Funds disbursements may be requested for costs incurred during that Fiscal Year.

“Annual Eligible Start Date” means the start of the Fiscal Year and is the date on or after which any Project Costs allocated to that Fiscal Year may be incurred and eligible for reimbursement hereunder.

“Annual Work Completion Date” means the end of the Fiscal Year, and is the last date on which Project Costs allocated to that Fiscal Year may be incurred under this Agreement.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

"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.

"Disbursement Period" means the period during which Project Funds may be disbursed.

"Disbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.

"Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any costs may be incurred and eligible for reimbursement hereunder.

"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) A material adverse change in the condition of the Recipient, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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 Disbursement Request Date" means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year.

"Force Account" means the use of the Recipient's own employees, equipment, or resources for the Project.

"Generally Accepted Accounting Principles (GAAP)" means 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.

"Grant Amount" means the maximum amount payable under this Agreement, as set forth on the Cover Page.

"Grant Contact" means the employee of the Recipient who has been delegated by the Project Director to oversee the day-to-day activities of the Project. The Grant Contact is set forth in Section 4 of this Agreement.

"Grant Manager" means the person designated by the State Water Board to manage performance of this Agreement. The Grant Manager is set forth in Section 4 of this Agreement.

"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; and taxes.

"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 Grant Manager or the Program Analyst.

"Point-zero" means the location in the surf zone immediately where runoff from an outfall meets the ocean water.

"Project" means the Project financed 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 financial assistance under this Agreement and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP.

"Project Director" means an employee of the Recipient designated by the Authorized Representative to be responsible for the overall management of the administrative and technical aspects of the executed Agreement. The Project Director is set forth in Section 4 of this Agreement.

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.

"Public Health Standard" means any public health standard, as set forth in Health and Safety Code sections 115875 through 115915 and California Code of Regulations Title 17 sections 7952 through 7962.

“Recipient” means City and County of San Francisco.

“Records Retention End Date” means the last date that the Recipient is obligated to maintain records 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.

“State” means State of California.

“State Water Board” means the State Water Resources Control Board.

“WDPF” means the Waste Discharge Permit Fund.

“Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A for review and approval by the Division. The Division may require corrective work to be performed prior to Project Completion. Any work occurring after the Work Completion Date will not be reimbursed under this Agreement.

“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.

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

CITY AND COUNTY OF SAN FRANCISCO:

By: _____
Name: Grant Colfax
Title: Director of Health

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Leslie S. Laudon
Title: Deputy Director
Division of Financial Assistance

Date: _____

EXHIBIT A – SCOPE OF WORK

A.1. PROJECT DESCRIPTION AND SCOPE OF WORK.

- (a) The Project is the project set forth on the Cover Page of this Agreement. The Project is for the benefit of the Recipient and is for the purpose of beach water monitoring and public notification.
- (b) Scope of Work.

The Recipient agrees to do the following:

1. Project Management

- 1.1 Submit all technical and administrative services as necessary for Project completion; monitor, supervise, and review all work performed; coordinate budgeting and scheduling to ensure the Project is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
- 1.2 Notify the Grant Manager of any proposed changes that arise during the Project that affect the scope, budget, or schedule of work performed for approval.
- 1.3 Establish and maintain a telephone hotline and web-based forms of communication to inform the public of all public beaches currently closed, posted, or otherwise restricted within its jurisdiction and changes in public health risks.

2. Plans and General Compliance Requirements

- 2.1 Prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) and submit to the Grant Manager. The QAPP shall contain, but is not limited to, the following:
 - 2.1.1 A list of beaches to be sampled with latitude and longitude coordinates of the beach extents.
 - 2.1.2 A list of sampling locations where samples are collected, in accordance with Public Health Standards, describing which beach they are located within, latitude and longitude coordinates of the sampling point(s) or station(s), and denoting which stations are point-zero locations.
 - 2.1.3 Descriptions of sample collection techniques, the sampling schedule, parameters sampled (i.e., bacteria type), testing methods used, units results are reported in, and other information as appropriate.
 - 2.1.4 A list of beach water quality samples collected under other permit requirements and the locations where these samples are collected.
 - 2.1.5 Quality Assurance (QA) procedures for data quality and evaluation that are in accordance with U.S. Environmental Protection Agency (USEPA) Guidance for Quality Assurance Project Plans – EPA QA/G5.
 - 2.1.6 Other specified data reporting requirements as described in the QAPP checklist provided to the Recipient.
- 2.2 Conduct sampling and monitoring activities in accordance with the approved QAPP.

- 2.3 Submit a memo annually to the State Water Board's QA Officer and Grant Manager stating that no changes were made to the previously submitted QAPP or outlining changes made to the previously submitted QAPP, the locations of these changes in the QAPP, and the revised QAPP.
 - 2.4 Obtain all public agency approvals, entitlements, or permits required for Project implementation before field work begins. If the Project is carried out on lands not owned by the Recipient, the Recipient must obtain adequate rights of way for the useful life of the Project. Submit a list and signed copies of such approvals, entitlements or permits to the Grant Manager, if applicable.
3. Beach Sampling and Analytical Testing
- 3.1 Collect samples of ocean waters adjacent to a public beach within the Recipient's jurisdiction in accordance with Public Health Standards if the beach is visited by more than fifty thousand (50,000) people annually and is located adjacent to a storm drain that flows in the summer.
 - 3.1.1 Collect samples at the Recipient's discretion, but for the period between and including April 1 and October 31, the Recipient must collect samples at least weekly unless sampling would be unsafe or samples are collected under other permit requirements.
 - 3.1.2 Identify samples not collected due to unsafe conditions and report them to the Grant Manager in the quarterly progress reports.
 - 3.2 Perform analytical testing of samples for enterococci, fecal coliform, and total coliform in accordance with the Public Health Standards.
 - 3.3 Record sample collection site information and analytical testing results into the online BeachWatch Database at <http://beachwatch.waterboards.ca.gov> as soon as practicable, but no later than five (5) business days following receipt of results, unless prior authorization for additional time is given by the Grant Manager.
4. Posting and Closing Beaches
- 4.1 Post with a minimum of one (1) or more conspicuous sign(s) to restrict the use of, close, or provide a warning notification for use of a beach or a portion thereof in accordance with the results of testing in Item 3 and Public Health Standards if the results of water quality testing show an exceedance of one (1) or more of the bacteria thresholds.
 - 4.1.1 Include the nature of the problem and the possible public health risk on the sign(s).
 - 4.1.2 Ensure the sign(s) is visible from each primary beach access point as identified in the coastal access inventory prepared and updated pursuant to Public Resources Code section 30531, and any additional access points identified by the Recipient.
 - 4.2 Close the waters in the event of a release of untreated sewage that is known to have reached recreational waters adjacent to a public beach until it has been determined that the waters are in compliance with the Public Health Standards.
 - 4.3 Notify the public agency or entity responsible for the operation and maintenance of the public beach and any appropriate local government agency official having jurisdiction over the land adjacent to the public beach within twenty-four (24) hours of the posting of a beach in accordance with the notification methods described in the QAPP.

4.4 Notify the Grant Manager of the posting of a beach in the quarterly progress report.

4.5 Investigate all complaints of a violation of any Public Health Standard.

A.2. STANDARD PROJECT REQUIREMENTS.

A.2.1 Acknowledgements.

The Recipient shall include the following acknowledgement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part 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.”

A.2.2 Reports.

A.2.2.1 Progress Reports.

- (a) The Recipient shall submit quarterly progress reports to the State Water Board's Grant Manager by the twentieth (20th) of the month following the end of the calendar quarter (March, June, September, and December).
 - (1) The progress reports shall provide a brief description of the work performed, including:
 - a. The number and location of sampling stations monitored;
 - b. The number of samples collected;
 - c. Any samples not collected due to unsafe conditions;
 - d. The number of beaches posted and/or closed;
 - e. laboratory costs per sample;
 - f. Any applicable public notification expenses; and,
 - g. the web address, telephone number, and other methods of public communication;
 - h. Accomplishments and milestones achieved during that quarter;
 - i. Monitoring results, and any problems encountered in the performance of the work under this Agreement.
 - (2) Include documentation of all contractor and subcontractor activities and expenditures in progress reports.
 - (3) The description of activities and accomplishments of each task during the quarter shall be in sufficient detail to provide a basis for payment of invoices. It must be clear to the Grant Manager how the activities and expenditures directly relate to the Beach Safety Program, or additional documentation may be required.
 - (4) The invoice must accompany the progress report. The invoice must reflect charges for the work completed during the reporting period covered by the progress report. The invoice cannot be paid prior to submission of a complete progress report covering the invoice reporting period.

A.2.2.2 Final Project Summary.

- (a) The Recipient shall prepare a brief summary including:

- (1) All of the information contained in the progress reports;
 - (2) Estimated and actual costs of the Project, including a description and amount of any funds from sources other than this Agreement necessary to complete the Project;
 - (3) Any appropriate photos or graphics such as sampling locations, field sampling equipment, or laboratories; and
 - (4) Any additional information deemed appropriate by the Project Director or Grant Manager.
- (b) The Recipient shall submit an electronic copy of the Final Project Summary each Fiscal Year in pdf format to the Grant Manager by the Annual Work Completion Date.

A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, 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.

A.3 DATES & DELIVERABLES.

- (a) Time is of the essence.
- (b) The Recipient must expeditiously proceed with and complete the Project.
- (c) The following dates are established as on the Cover Page of this Agreement:
 - (1) Eligible Work Start Date
 - (2) Work Completion Date
 - (3) Final Disbursement Request Date
 - (4) Records Retention End Date
- (d) The Recipient must begin work timely.
- (e) The undisbursed balance for any Fiscal Year of this Agreement may be deobligated if the Recipient does not provide its final Disbursement Request to the Division on or before the Annual Disbursement Request Deadline, unless prior approval has been granted by the Division.
- (f) Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. However, the dates in the "Estimated Due Date" column of this table may be adjusted as necessary during the Disbursement Period with Grant Manager approval. All work or submittals must be achieved with relevant submittals approved by the Division prior to the Work Completion Date, the final Disbursement Request for each Fiscal Year must be submitted prior to the Annual Disbursement Request Deadline, and the final Disbursement Request must be submitted prior to the Final Disbursement Request Date set forth in Exhibit B.

As applicable for specific submittals, the Recipient shall plan adequate time to solicit, receive, and address comments prior to submitting the final submittal.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A-3 PROJECT-SPECIFIC SCOPE OF WORK			
1.	Project Management		
1.2	Proposed Changes That Arise During Project		As Needed
2.	Plans and General Compliance Requirements		
2.3	Memo and revised QAPP, if applicable		Annually by March 31 or 30 days after execution, whichever is later
2.4	Public Agency Approvals, Entitlements, Permits, or Landowner Agreement(s) (If Applicable)	Before Work Begins	
3.	Beach Sampling and Analytical Testing		
3.3	Sampling Result Data in BeachWatch Database	Within 5 Days of Received Sampling Results	
4.	Posting and Closing Beaches		
4.4	Notification of Any Beach Postings or Closures	Quarterly	
EXHIBIT A-5 REPORTING			
(a)	Progress Reports by the twentieth (20 th) of the month following the end of the calendar quarter (March, June, September, and December)	Quarterly	
(b)	Final Project Summary	By Work Completion Date	
	As Needed Reports and Final Project Inspection		As Needed
EXHIBIT B – FUNDING TERMS			
1.4	Final Disbursement Requests		
	Fiscal Year 2019-2020	July 31, 2020	
	Fiscal Year 2020-2021	July 31, 2021	
	Fiscal Year 2021-2022	July 31, 2022	
1.7(d)	Disbursement Request	Quarterly	

EXHIBIT B – FUNDING TERMS

B.1. FUNDING AMOUNTS AND DISBURSEMENTS.

B.1.1 Funding Contingency and Other Sources.

- (a) If this Agreement's funding for any Fiscal Year expires due to reversion or is reduced, substantially delayed, deleted, or not made available 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.
- (b) 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 share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board.

B.1.2 Estimated Reasonable Cost.

The estimated reasonable cost of the total Project is EIGHTY-SEVEN THOUSAND SIX HUNDRED SEVENTY-FIVE DOLLARS (\$87,675).

B.1.3 Grant Amount.

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed TWENTY-NINE THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS (\$29,225) per Fiscal Year, and not to exceed the amount of the Grant Amount set forth on the Cover Page of this Agreement in total.

The Beach Safety Program is funded by an annual appropriation from the Waste Discharge Permit Fund (WDPF). If the Beach Safety Program receives insufficient funding to provide Project Funds in any Fiscal Year for any reason including, but not limited to, failure of the state government to appropriate funds necessary for disbursement of Project Funds or a change in policy, 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.

If state or federal law, policies, or regulations change prior to the Annual Eligible Start Date for any Fiscal Year such that disbursement of Project Funds under this Agreement would violate or conflict with state or federal law, policies, or regulations, as determined by the Division, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board or, if possible, offer an amendment to the Recipient to reflect the new funding conditions.

Project Funds may only reimburse costs incurred in the Fiscal Year for which they are allocated, as set forth in the table below. If the Recipient does not submit invoices requesting all of the funds encumbered for that Fiscal Year by the Annual Disbursement Request Deadline, any remaining amount will revert to the State and will not be available to reimburse costs incurred past the Annual Work Completion Date.

B.1.4 Annual Funding Amounts and Deadlines.

Fiscal Year	Allocated Project Funds	Annual Eligible Start Date	Annual Work Completion Date	Annual Disbursement Request Deadline
2019-2020	\$29,225	July 1, 2019	June 30, 2020	July 31, 2020
2020-2021	\$29,225	July 1, 2020	June 30, 2021	July 31, 2021
2021-2022	\$29,225	July 1, 2021	June 30, 2022	July 31, 2022

B.1.5 Budget Costs.

Annual budget costs are contained in the Project Cost Table below:

LINE ITEM	WDPF STATE FUNDS	TOTAL PROJECT COSTS
Personnel Services [these are persons employed by the Recipient. Must have classification, hours, & pay rates on file.]	\$24,499	\$24,499
Actual Indirect Costs (Not to exceed 20%)	\$3,430	\$3,430
Operating Expenses: Travel, Sample Collection, Supplies	\$1,296	\$1,296
Laboratory Costs	\$0	\$0
TOTAL	\$29,225	\$29,225

- (a) Subject to the prior review and approval of the Grant Manager, adjustments between existing line items may be used to defray allowable direct costs up to fifteen percent (15%) of the annual Project Funds, including any amendment(s) thereto. Line Item adjustments approved by the Grant Manager must be de minimis, less than 15% of the annual Project Funds, and may not include any changes to the Scope of Work. Line item adjustments in excess of fifteen percent (15%) or line item adjustments that result in a change to the scope of work will require an Agreement amendment. If the detailed budget includes an amount for the Recipient's personnel costs, that amount is based on the hours, classifications, and rates submitted by the Recipient in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Grant Manager.
- (b) The Recipient may submit a request for an adjustment in writing to the Grant Manager. Such adjustment may not increase or decrease the total Grant Amount allocated to any Fiscal Year or move funds between Fiscal Years. The Recipient shall submit a copy of the original Agreement budget sheet 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.

- (c) The sum of adjusted line items for any Fiscal Year shall not exceed the total budget amount allocated to that Fiscal Year.
- (d) In the event the Recipient does not submit invoices requesting all of the funds encumbered for a Fiscal Year under this Agreement by the corresponding Annual Disbursement Request Deadline, any remaining funds revert to the State. The State Water Board will mail a Notice of Project Completion letter to the Recipient stating that the project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

B.1.6 Contingent Disbursement.

- (a) 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 Grant Funds until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.
- (b) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.
- (c) The State Water Board's obligation to disburse Project 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 Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. 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 agency. 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.
- (d) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
- (e) 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.
- (f) The Recipient agrees to ensure that its final Disbursement Request for each Fiscal Year is received by the Division no later than the Annual Disbursement Request Deadline, unless prior approval has been granted by the Division. If the final Disbursement Request for a Fiscal Year is not received by the Annual Disbursement Request Deadline, the undisbursed balance for that Fiscal Year may be deobligated.
- (g) The Recipient agrees to ensure that its final Disbursement Request is received by the Division no later than the Final Disbursement Request Date, unless prior approval has been granted by the Division. If the final Disbursement Request is not received timely, the undisbursed balance of this Agreement may be deobligated.
- (h) The Recipient is not entitled to interest earned on undisbursed funds.
- (i) Management fees or similar charges in excess of the Direct Costs are prohibited. The term "management fees or similar charges" refers to expenses added to the Direct Costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen

liabilities, or for other similar costs which are not allowable under the Agreement. The payment of Indirect Costs with federal money is only allowed a de minimis rate of ten percent (10%) or an approved federally recognized indirect cost rate negotiated between the Recipient and the Federal Government. The Recipient may only seek reimbursement of Indirect Costs incurred during the term of this Agreement and shall comply with 2 CFR part 200 (E) and Appendix V to 2 CFR part 200. For grant recipients receiving federal USEPA funds, any invoice submitted including Indirect Costs in excess of a de minimis rate of ten percent (10%) that have not been pre-approved by a federal agency for the term of this Agreement will cause that invoice, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement with federal USEPA funds. Recipients with USEPA-approved Indirect Cost rates agree to comply with 2 CFR Part 200 (E) and Appendices V and VII to 2 CFR part 200.

B.1.7 Disbursement Procedure.

Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

- (a) Upon execution and delivery of this Agreement, the Recipient may submit a Disbursement Request for eligible Project Costs as specified in this Exhibit from the Project Costs through submission to the State Water Board using the Disbursement Request form and the Reimbursement Request form provided by the Grant Manager.
- (b) Disbursement Requests shall contain the following information:
 - (1) The date of the request;
 - (2) The time period covered by the request, i.e., the term "from" and "to";
 - (3) The total amount requested;
 - (4) Original signature and date (in ink) of the Recipient's Project Director or his/her designee; and
 - (5) The final Disbursement Request shall be clearly marked "FINAL DISBURSEMENT REQUEST" and shall be submitted no later than the Final Disbursement Request Date. The final Disbursement Request for each Fiscal Year shall be submitted no later than the Annual Disbursement Request Deadline.
- (c) Disbursement Requests must be itemized based on the line items specified in the budget in this Exhibit. Disbursement Requests must be complete, signed by the Recipient's Project Director or his/her designee, and addressed to the Grant Manager as set forth in Section 4 of this Agreement. Disbursement Requests submitted in any other format than the one provided by the State Water Board will cause a Disbursement Request to be disputed. In the event of such a dispute, the Grant Manager will notify the Recipient. Payment will not be made until the dispute is resolved and a corrected Disbursement Request submitted. The Grant Manager has the responsibility for approving Disbursement Requests. Project Costs incurred prior to the Eligible Work Start Date of this Agreement will not be reimbursed.
- (d) Project Funds must be requested quarterly via Disbursement Request for eligible costs incurred during the reporting period of the corresponding Progress Report, describing the activities and expenditures for which the disbursement is being requested. Each

Disbursement Request must be accompanied by a Progress Report. Failure to provide timely Disbursement Requests may result in such requests not being honored.

- (e) The Recipient agrees that it will not submit any Disbursement Requests that include any Project Costs 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 Disbursement Request. Supporting documentation (e.g., receipts, laboratory invoices) must be submitted with each Disbursement Request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed Disbursement Request.
- (f) The Recipient will not seek reimbursement of any Project Costs that have been reimbursed from other funding sources.
- (g) The Recipient shall use Project Funds within 30 days of receipt to reimburse contractors, vendors, and other Project Costs. Any interest earned on Project Funds shall be reported to the State Water Board and will either be required to be returned to the State Water Board or deducted from future disbursements. In the event that the Recipient fails to disburse Project Funds to contractors or vendors within thirty (30) days from receipt of the Project Funds, the Recipient shall immediately return such Project Funds to the State Water Board. Interest shall accrue on such Project Funds from the date of disbursement through the date of mailing of Project Funds to the State Water Board. If the Recipient held such Project Funds in interest-bearing accounts, any interest earned on the Project Funds shall also be due to the State Water Board.
- (h) The Recipient shall submit its final Disbursement Request for each Fiscal Year no later than the Annual Disbursement Request Deadline. If the Recipient fails to do so, the undisbursed balance for that Fiscal Year may be deobligated.
- (i) The Recipient shall submit its final Disbursement Request no later than the Final Disbursement Request Date specified herein unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement may be deobligated.
- (j) The Recipient agrees that it will not request a disbursement unless that cost is allowable, reasonable, and allocable.
- (k) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner that is in violation of or in conflict with federal or state laws, policies, or regulations.
- (l) The Recipient agrees that it shall not be entitled to interest earned on undisbursed Project Funds.
- (m) No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination of this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be 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.

The Recipient must include any other documents or requests required or allowed under this Agreement.

B.1.8 Withholding of Disbursements.

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) The Recipient's failure 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 that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- (c) Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (d) A material adverse change in the condition of the Recipient 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 term 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 regarding the Project;
- (g) An event requiring Notice as set forth in Exhibit C;
- (h) An Event of Default or an event that the Division determines may become an Event of Default.

B.1.9 Fraud and Misuse of Public Funds.

All requests for disbursement submitted must be accurate and signed by the Recipient's 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 eligible 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 eligible 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 repayment of all Project 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.

B.2 RECIPIENT'S PAYMENT OBLIGATION.

B.2.1 Project Costs.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs and Additional Payments. 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.

EXHIBIT C – GENERAL AND PROGRAMMATIC TERMS AND CONDITIONS

C.1 REPRESENTATIONS & WARRANTIES.

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.

C.1.1 Application and General Recipient Commitments.

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.

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

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.

C.1.2 Authorization and Validity.

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.1.3 No Violations.

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 set forth on the first page hereof, 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 set forth on the Cover Page.

C.1.4 No Litigation.

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 the financial condition or operations of the Recipient, and/or the Project.

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.

C.1.5 Property Rights.

The Recipient owns or has sufficient property rights in the Project property for the purposes contemplated in this Agreement, either in fee simple or for a term of years that is not subject to third-party revocation prior to Project Completion.

C.1.6 Solvency and Insurance.

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.

C.1.7 Legal Status and Eligibility.

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. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, 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 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.

The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.

C.1.9 Compliance with State Water Board Funding Agreements.

The Recipient represents that it is in compliance with all State Water Board funding agreements to which it is a party.

C.2 DEFAULTS AND REMEDIES.

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement.

C.2.1 Return of Funds; Acceleration; and Additional Payments.

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, immediately to do each of the following:

- (a) return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- (b) pay interest at the highest legal rate on all of the foregoing; and
- (c) pay any Additional Payments.

C.2.2 Judicial remedies.

Whenever the State Water Board determines that an Event of Default shall have occurred, the State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. Without limiting the generality of the foregoing, the State Water Board may:

- (a) by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- (b) by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement; and

- (c) take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

C.2.3 Termination.

Upon an Event of Default, the State Water Board may terminate this Agreement. Interest shall accrue on all amounts due at the highest legal rate of interest from the date that the State Water Board delivers notice of termination to the Recipient.

C.2.4 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, 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, 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.

C.2.5 Remedies and Limitations.

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 claim of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the claims procedures provided to the Recipient under this Agreement.

C.2.6 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.

C.2.7 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.

C.3 STANDARD CONDITIONS.

C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure that the State Water Board, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times for the term of the Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are 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, Disbursement Requests, and supporting documentation submitted hereunder.

C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention.

- (a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. 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:
- (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
 - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
 - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
 - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
 - (5) 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
 - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Costs from Force Account are not eligible for funding.
- (b) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of seven (7) years after Work Completion. 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 California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. 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.

C.3.3 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. Requests for amendments must be made in writing and directed to the Party Contacts listed in Section 4.

C.3.4 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

C.3.5 Audit.

- (a) 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.
- (b) Audit disallowances must be returned to the State Water Board.

C.3.6 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.

C.3.7 Competitive Bidding

The Recipient must adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

C.3.8 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. Without limitation of the foregoing, to the extent applicable, the Recipient must:

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

C.3.9 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.

C.3.10 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

C.3.11 Data Management.

The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

C.3.12 Disputes.

- (a) The Recipient may 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.

- (b) This clause 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.
- (c) Recipient must continue with the responsibilities under this Agreement during any dispute.
- (d) 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.

C.3.13 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.

C.3.14 Environmental Clearance.

Notwithstanding any other provision, the State Water Board has no binding obligation to provide funding under this Agreement except for activities excluded from, not subject to, or exempt under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). No work that is subject to CEQA or 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.

C.3.15 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

C.3.16 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under 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.

C.3.17 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 Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Parties 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.

C.3.18 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.

C.3.19 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.

C.3.20 No Discrimination.

- (a) 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.
- (b) 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.
- (c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- (d) The Recipient's obligations under this section shall survive the term of this Agreement.
- (e) 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.

- (f) 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.
- (g) 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.
- (h) 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.
- (i) The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C.3.21 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

C.3.22 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.

C.3.23 Notice.

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

- (a) The Recipient must notify the Division within 24 hours of any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during 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.
- (b) The Recipient must notify the Division within five (5) business days of the occurrence of any of the following events:
 - (1) Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - (2) Change of ownership of the Project;
 - (3) Loss, theft, damage, or impairment to Project;
 - (4) Events of Default, except as otherwise set forth in this section;
 - (5) Failure to observe or perform any covenant or comply with any condition in this Agreement;

- (c) The Recipient must notify the Division in writing within ten (10) business days of the following events:
- (1) Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the or the Recipient's continued existence;
 - (2) Consideration of dissolution, or disincorporation;
 - (3) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds; or
 - (4) Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- (d) The Recipient must notify the Division promptly of any of the following events:
- (1) The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - (2) 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;
 - (3) Cessation of work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (4) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Work Completion for a period of ninety (90) days or more;
 - (5) 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;
 - (6) Work Completion, and actual Project Completion.

C.3.24 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the Project throughout the term of this Agreement in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the 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 facilities or structures integral to completion of this Project, if any) as are usually covered in connection with projects similar to the 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 Project or any larger system of which it is a part 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 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 Project must be free and clear of all claims and liens.

C.3.25 Permits, Subcontracting, and Remedies.

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 begins.

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

C.3.26 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. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). 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.

C.3.27 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

C.3.28 Public Funding.

This Project is publicly funded. 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.

C.3.29 Recipient's 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. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

C.3.30 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in

this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

C.3.31 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.

C.3.32 State Water Board Action; Costs and Attorney Fees.

Any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. 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.

C.3.33 Timeliness.

Time is of the essence in this Agreement.

C.3.34 Unenforceable Provision.

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.

C.3.35 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.

C.3.36 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. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

C.4.1 State Program Requirements.

The Recipient, its consultants, and contractors shall comply with WDPF requirements, including Water Code sections 13260-13261 and 13269, and the regulations promulgated thereunder.

C.4.2 State Cross-Cutters.

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

- (a) 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.
- (b) Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- (c) Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- (d) 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.
- (e) Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- (f) Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- (g) Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- (h) Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- (i) Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.