

[DFA: Review all bracketed language and modify appropriately before using template.]



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BEACH MONITORING  
GRANT

AGREEMENT NO. [ ]

by and between

[Recipient] ("Recipient")

AND

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

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Sections 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.

PROJECT FUNDING AMOUNT: \$ [ ]

ELIGIBLE WORK START DATE: [ ]

WORK COMPLETION DATE: [ ]

FINAL REIMBURSEMENT REQUEST DATE: [ ]

RECORDS RETENTION END DATE: [Work Completion + 7]

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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 TERMS
- EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV
- EXHIBIT D – SPECIAL CONDITIONS

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

State Water Board		[Recipient]	
Section:	Division of Water Quality		
Name:	Amanda Blackwell, Project Manager	Name:	[Name], [Title]
Address:	1001 I Street, 15 <sup>th</sup> Floor	Address:	
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	
Phone:	(916) 327-8651	Phone:	
Email:	Amanda.Blackwell@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.

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

(a) [if not already received] The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its Authorized Representative by title.

(b) [other, if any]

4. 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 the 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, and professional liability.
  - (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.
5. 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.

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

RECIPIENT:

STATE WATER RESOURCES CONTROL  
BOARD:

By:

By:

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

\_\_\_\_\_  
Name: [Name]  
Title: [Title]  
Division of Financial Assistance

Date:

Date:

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT A – SCOPE OF WORK AND SCHEDULE

### A.1 PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient. The funding under this Agreement shall be used for the purpose of beach water monitoring and public notification.

### A.2 SCOPE OF WORK.

The Recipient agrees to do the following:

#### 1. Project Management

- 1.1 Provide 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 Project 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 Project 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 United States Environmental Protection Agency (USEPA) Guidance for Quality Assurance Project Plans – EPA QA/G-5 (<https://www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf>).
  - 2.1.6 Other specified data reporting requirements as described in the QAPP checklist provided in Appendix C of EPA QA/G-5 (<https://www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf>).
  - 2.2 Conduct sampling and monitoring activities in accordance with the approved QAPP, the State Water Board's Quality Management Plan, and the Quality Assurance Program Plan once established.
  - 2.3 Submit a memo annually to the State Water Board's QA Officer and Project Manager stating that no changes were made to the previously submitted QAPP or submit a memo to the State Water Board's QA Officer and Project Manager outlining changes made to the previously submitted QAPP, the locations of these changes in the QAPP, and the revised QAPP within thirty (30) days of making revisions to the 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 Project 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 as described in the QAPP.

- 3.1.2 Identify samples not collected due to unsafe conditions and report them to the Project 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 Project 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 Project 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.3 PROGRESS REPORTS.

The Recipient must submit quarterly progress reports to the State Water Board's Project Manager by the twentieth (20<sup>th</sup>) of the month following the end of the calendar quarter (March, June, September, and December). The progress reports must 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;
- (g) The web address, telephone number, and other methods of public communication;
- (h) Accomplishments and milestones achieved during that quarter; and
- (i) Monitoring results, and any problems encountered in the performance of the work under this Agreement.

Include documentation of all contractor and subcontractor activities and expenditures in progress reports. The description of activities and accomplishments of each task during the quarter must be in sufficient detail to provide a basis for payment of Reimbursement Requests. It must be clear to the Project Manager how the activities and expenditures directly relate to the Beach Safety Program, or additional documentation may be required. The Reimbursement Request must accompany the progress report. The Reimbursement Request must reflect charges for the work completed during the reporting period covered by the progress report. The Reimbursement Request cannot be paid prior to submission of a complete progress report covering the Reimbursement Request reporting period.

### A.4 FINAL PROJECT SUMMARY.

Prior to the Annual Work Completion Date for each Fiscal Year, the Recipient must prepare and submit via pdf to the Project Manager an annual Final Project Summary including:



- (a) All of the information contained in the progress reports submitted;
- (b) Estimated and actual costs of the Project for each Fiscal Year, including a description and amount of any funds from sources other than this Agreement necessary to complete the Project;
- (c) Any appropriate photos or graphics such as sampling locations, field sampling equipment, or laboratories; and
- (d) Any additional information deemed appropriate by the Project Director or Project Manager.

A.5 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager 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 Work 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 submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page, and the final Reimbursement Request for each Fiscal Year prior to the corresponding Annual Reimbursement Request Deadline in Exhibit B.4.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A.2 – SCOPE OF WORK			
1.	Project Management		
1.2	Notification of Proposed Changes		As Needed
2.	Plans and General Compliance Requirements		
2.1	QAPP		[Date]
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	

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
<b>EXHIBIT A.2 – SCOPE OF WORK</b>			
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	
<b>REPORTS</b>			
A.3	Progress reports by the twentieth (20 <sup>th</sup> ) of the month following the end of the calendar quarter (March, June, September December)	Quarterly	
A.4	Final Project Summary	Annually, by Annual Work Completion Date	
<b>EXHIBIT B – FUNDING TERMS</b>			
B.6(e)	Reimbursement Requests	Quarterly	
B.6(i)	Final Reimbursement Request	[Date]	

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.

## EXHIBIT B – FUNDING TERMS

### B.1 PROJECT FUNDS.

- (a) Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed [REDACTED] per Fiscal Year, and not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement in total.
- (b) The Beach Safety Program is funded by an annual appropriation from the Waste Discharge Permit Fund (WDPF) and an annual capitalization grant from the USEPA. If the Beach Safety Program receives insufficient funding to provide Project Funds in the amounts set forth in this Agreement in any Fiscal Year for any reason including, but not limited to, a decrease in the total amount of state or federal Beach Safety Program funding available, failure of the state government to appropriate funds necessary for reimbursement 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.
- (c) If state or federal law, policies, or regulations change prior to the Annual Eligible Start Date for any Fiscal Year such that reimbursement 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.
- (d) Project Funds may only reimburse costs incurred in the Fiscal Year for which they are allocated, as set forth in Exhibit B.4. If the Recipient does not submit invoices requesting all of the funds encumbered for that Fiscal Year by the Annual Reimbursement Request Deadline, any remaining amount may revert to the State, and will not be available to reimburse costs incurred past the Annual Work Completion Date.

### 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.

### 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.**

Annual Funding Limits and Deadlines

Fiscal Year	Allocated Project Funds	Annual Eligible Start Date	Annual Work Completion Date	Annual Reimbursement Request Deadline
2022-2023	\$	[earliest possible date: July 1, 2022]	[latest possible date: June 30, 2023]	[date]
2023-2024	\$	[July 1, 2023]	[June 30, 2024]	[date]
2024-2025	\$	[July 1, 2024]	[June 30, 2025]	[date]

**B.5 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.]	\$	\$
Actual Indirect Costs (Not to Exceed 20% State Funds)	\$	\$
Operating Expenses: Travel, Sample Collection, Supplies*	\$	\$
Laboratory Costs	\$	\$
<b>TOTAL</b>	<b>\$</b>	<b>\$</b>

\* Necessary travel and per diem costs may be reimbursed only in accordance with 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.

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

#### B.6 LINE ITEM ADJUSTMENTS.

- (a) Subject to the prior review and approval of the Project 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 Project Manager must be de minimis, less than fifteen percent (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 Project Manager.
- (b) The Recipient may submit a request for an adjustment in writing to the Project Manager. Such adjustment may not increase or decrease the Project Funding Amount allocated to any Fiscal Year or move funds between Fiscal Years. The Recipient shall submit a copy of the original 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.
- (c) The sum of adjusted line items for any Fiscal Year shall not exceed the total budget amount allocated to that Fiscal Year.

#### B.7 REIMBURSEMENT PROCEDURE.

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

- (a) Upon execution and delivery of this Agreement, the Recipient may request reimbursement of any eligible Project Costs as specified in this Exhibit through submission to the State Water Board using the Reimbursement Request forms provided by the Project Manager.
- (b) Reimbursement Requests must 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) or electronic signature, consistent with the State Water Board’s approved procedures, of the Recipient’s Authorized Representative or his/her designee; and
  - (5) The final Reimbursement Request must be clearly marked “FINAL REIMBURSEMENT REQUEST” and must be submitted NO LATER THAN the Final Reimbursement Request Date. The final Reimbursement Request for each Fiscal Year shall be submitted no later than the Annual Reimbursement Request Deadline.
- (c) The Recipient may sign Reimbursement Requests either by an electronic signature consistent with the State Water Board’s approved procedures or by a physical, handwritten signature. The parties mutually agree that an electronic signature consistent with the State Water Board’s approved procedures is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.
- (d) Reimbursement Requests must be itemized based on the line items specified in the budget in this Exhibit. Reimbursement Requests must be complete, signed by the Recipient’s Project Director or his/her designee, and addressed to the Project Manager as set forth in this Agreement. Reimbursement Requests submitted in any other format than the one provided by the State Water Board will cause a Reimbursement Request to be disputed. In the event of such a dispute, the Project Manager will notify the Recipient. Payment will not be made until the dispute is resolved and a corrected Reimbursement Request is submitted. The Project Manager has the responsibility for approving Reimbursement Requests. Project Costs incurred prior to the Eligible Work Start Date of this Agreement will not be reimbursed.
- (e) Project Funds must be requested quarterly via Reimbursement Request for eligible costs incurred during the reporting period of the corresponding Progress Report, describing the activities and expenditures for which the reimbursement is being requested. Each Reimbursement Request must be accompanied by a Progress Report. Failure to provide timely Reimbursement Requests may result in such requests not being honored.
- (f) The Recipient agrees that it will not submit any Reimbursement Requests that include any Project Costs until such costs have been incurred and are

currently due and payable by the Recipient, although the actual payment of such costs by the Recipient is not required as a condition of reimbursement. Supporting documentation (e.g., receipts, laboratory invoices) must be submitted with each Reimbursement Request as well as to support Match Contributions claimed, if any. 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). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed Reimbursement Request.

- (g) The Recipient will not seek reimbursement of any Project Costs that have been reimbursed from other funding sources.
- (h) The Recipient must use Project Funds within thirty (30) days of receipt to reimburse contractors, vendors, and other Project Costs. Any interest earned on Project Funds must be reported to the State Water Board and will either be required to be returned to the State Water Board or deducted from future reimbursements. 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 must immediately return such Project Funds to the State Water Board. Interest shall accrue on such Project Funds from the date of reimbursement 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.
- (i) The Recipient must submit its final Reimbursement Request for each Fiscal Year no later than the Annual Reimbursement Request Deadline. If the Recipient fails to do so, the undisbursed balance for that Fiscal Year may be deobligated.
- (j) The Recipient must submit its final Reimbursement Request no later than the Final Reimbursement Request Date specified herein. If the Recipient fails to do so, then the undisbursed balance of this Agreement may be deobligated.
- (k) The Recipient agrees that it will not request a reimbursement unless that cost is allowable, reasonable, and allocable.
- (l) Notwithstanding any other provision of this Agreement, no reimbursement 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.

- (m) The Recipient agrees that it shall not be entitled to interest earned on undisbursed Project Funds.
- (n) The Recipient must include any other documents or requests required or allowed under this Agreement.

#### B.8 CONTINGENT DISBURSEMENT.

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.

#### B.9 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered for any Fiscal Year under this Agreement by the corresponding Annual Reimbursement Request Deadline, 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.



EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is incorporated by reference and 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)

## EXHIBIT D – SPECIAL CONDITIONS

### D.1 DEFINITIONS.

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

- “Annual Reimbursement Request Deadline” means 30 days after the end of the Fiscal Year, after which date, no further Project Funds reimbursements 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.
- “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, 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, which the Division reasonably determines would materially impair the Recipient’s ability to satisfy its obligations under this Agreement.
  - (b) Failure to operate the Project, unless the Division has given its approval for such non-operation;
- “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.

- “Point-zero” means the location in the surf zone immediately where runoff from an outfall meets the ocean water.
- “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.
- “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 [Name of Recipient].
- “WDPF” means the Waste Discharge Permit Fund.

## D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

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 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.

The execution, delivery, and performance by the 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 the Recipient is a party or by which the Recipient is bound as of the date of execution of this Agreement by the Recipient.

There are, as of the date of execution of this Agreement by the Recipient, no pending or, to the 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.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. The 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 (10) years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

Any financial statements or other financial documentation of the Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (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 or other financial documentation, 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 the Recipient and approved in writing by the State Water Board.

The Recipient has sufficient real or personal property 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, except as disclosed to the State Water Board. 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.

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 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 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.5 OPERATION AND MAINTENANCE.

The Recipient shall sufficiently and properly staff, operate, and maintain 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 necessary for the Project; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

#### D.6 INSURANCE.

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 Project) 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 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.

#### D.7 NOTICE.

Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts promptly:

- (a) Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
- (b) Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
- (c) Loss, theft, damage, or impairment to Project;

- (d) Events of Default, except as otherwise set forth in this section;
- (e) A proceeding or action by a public entity to acquire the Project by power of eminent domain;
- (f) 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;
- (g) Consideration of dissolution, or disincorporation;
- (h) Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- (n) 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;
- (o) Any event requiring notice to the Division pursuant to any other provision of this Agreement;
- (p) Work Completion, and Project Completion.

#### D.8 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 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.

#### D.9 DISPUTES.

The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within thirty (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 thirty (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.10 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.

#### D.11 STATE CROSS-CUTTERS.

The Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the 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 Water Code section 10608.56.
- 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.

#### D.12 RUSSIAN SANCTIONS.

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.