



**BEACH MONITORING PROGRAM
GRANT**

AGREEMENT No. D2514113

by and between

COUNTY OF SANTA BARBARA ("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: \$372,675
ESTIMATED REASONABLE PROJECT COST: \$372,675
ELIGIBLE WORK START DATE: JULY 1, 2025
WORK COMPLETION DATE: JUNE 30, 2028
FINAL REIMBURSEMENT REQUEST DATE: JULY 31, 2028
RECORDS RETENTION END DATE: JUNE 30, 2035

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

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

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

| State Water Board | | County of Santa Barbara | |
|-------------------|--|-------------------------|----------------------------------|
| Section: | Division of Water Quality | | |
| Name: | Beverly Scharnhorst, Project Manager | Name: | Jason Johnston, Project Director |
| Address: | 1001 I Street, 15th Floor | Address: | 300 N San Antonio Road |
| City, State, Zip: | Sacramento, CA 95814 | City, State, Zip: | Santa Barbara, CA 93110 |
| Phone: | (916) 341-5964 | Phone: | (805) 346-7348 |
| Email: | Beverly.Scharnhorst@waterboards.ca.gov | Email: | jjohnston@sbcphd.org |

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) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
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.

COUNTY OF SANTA BARBARA:

STATE WATER RESOURCES CONTROL
BOARD:

By:

By:

Name: Mouhanad Hammami, MD, MHSA
Title: County Health – Director

Name: Joe Karkoski
Title: Deputy Director
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 Review, annually at a minimum, and comply with the requirements set in the most current version of the State Water Board's Beach Program Quality Assurance Program Plan (QAPrP) until the State Water Board adopts the approved program-level Quality Management Plan (QMP) and Quality Assurance Project Plan (QAPP). Once adopted, the Recipient must annually review and comply with the program-level QMP and QAPP. Here forward, the QAPrP and the QMP and QAPP are collectively referred to as the Quality Assurance Documentation.

2.2 Any requested updates or deviations, or lack thereof, to the Quality Assurance Documentation, must be submitted by the Recipient via a memo to the Project Manager identifying requested updates or deviations to the information and requirements in the Quality Assurance Documentation. Any updates or deviations must be provided as a supplemental Quality Assurance Project Plan (QAPP) in a format in accordance with United States Environmental Protection Agency (USEPA) Guidance for Quality Assurance Project Plans. Updates or deviations may include, but are not limited to:

2.2.1 Updates to the list of beaches to be sampled with latitude and longitude coordinates of the beach extents.

2.2.2 Updates to the 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.

2.2.3 A list of beach water quality samples collected under other permit requirements and the locations where these samples are collected.

2.2.4 Descriptions of any requested deviations to sample collection techniques, the sampling schedule, parameters sampled (i.e., bacteria type), testing methods used, units results are reported in, and other information as needed.

2.2.5 Other data reporting requirements not described in Quality Assurance Documentation.

2.3 Conduct Project activities, including sampling and monitoring, in accordance with the most current version of the Quality Assurance Documentation.

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 Quality Assurance Documentation.

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 <https://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 Quality Assurance Documentation.

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 dates set forth in Exhibit A.5 for each 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;
- (i) Monitoring results, and any problems encountered in the performance of the work under this Agreement; and
- (j) Corrective Action Report in compliance with the requirements set in the Quality Assurance Documentation.

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 conduct an annual review of the Quality Assurance Documentation and 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 – SCOPE OF WORK | | | |
| A.2.1. | Project Management | | |
| A.2.1.2 | Notification of Proposed Changes | | As Needed |
| A.2.2. | Plans and General Compliance Requirements | | |
| A.2.2.2 | Memo and supplemental QAPP, if needed, of any requested updates or deviations to the information and requirements in the Quality Assurance Documentation | | Annually, at a minimum, by March 31 or 30 days after execution, whichever is later |
| A.2.2.4 | Public agency approvals, entitlements, permits, or landowner agreement(s) (if applicable) | Before work begins | |
| A.2.3. | Beach Sampling and Analytical Testing | | |
| A.2.3.3 | Sampling result data in BeachWatch database | | Within 5 days of received sampling results |
| A.2.4. | Posting and Closing Beaches | | |
| A.2.4.4 | Notification of any beach postings or closures | Quarterly | |

| ITEM | DESCRIPTION OF SUBMITTAL | CRITICAL DUE DATE | ESTIMATED DUE DATE |
|------------------------------------|---|--|--------------------|
| EXHIBIT A – SCOPE OF WORK | | | |
| A.3 | Progress reports by the twentieth (20 th) 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 | |
| EXHIBIT B – FUNDING AMOUNTS | | | |
| B.7(a)(10) | Final Reimbursement Request | July 31, 2028 | |
| B.7(a)(5) | Reimbursement Requests | Quarterly | |

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 PROVISIONS**B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.**

- (a) The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement, and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement.
- (b) Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed ONE HUNDRED TWENTY-FOUR THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS (\$124,225) 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.
- (c) The Beach Safety Program is funded by an annual appropriation from the Waste Discharge Permit Fund (WDPF) and an annual capitalization grant from the United States Environmental Protection Agency. The maximum allocation the Recipient may receive in each Fiscal Year is dependent on the total amount of state and federal funding received by the Program. If the Beach Safety Program receives, at the State Water Board's sole determination, 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 for the program as a whole, failure of the State or federal government to appropriate or make available 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. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity.
- (d) 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.
- (e) 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 |
|-------------|-------------------------|----------------------------|-----------------------------|---------------------------------------|
| 2025-2026 | \$124,225 | July 1, 2025 | June 30, 2026 | July 31, 2026 |
| 2026-2027 | \$124,225 | July 1, 2026 | June 30, 2027 | July 31, 2027 |
| 2027-2028 | \$124,225 | July 1, 2027 | June 30, 2028 | July 31, 2028 |

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.] | \$42,274 | \$42,274 |
| Actual Indirect Costs (Not to exceed 20% State funds) | \$8,455 | \$8,455 |
| Operating Expenses: Travel, Sample Collection, Supplies* | \$14,186 | \$14,186 |
| Laboratory Costs | \$59,310 | \$59,310 |
| TOTAL | \$124,225 | \$124,225 |

* 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 twenty-five percent (25%) of the annual Project Funds, including any amendment(s) thereto. Line Item adjustments approved by the Project Manager must be de minimis, less than 25% of the annual Project Funds, and may not include any changes to the Scope of Work. Line item adjustments in excess of twenty-five percent (25%) 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 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.

B.7 REIMBURSEMENT PROCEDURE.

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

- (1) Upon execution and delivery of this Agreement, the Recipient may submit a Reimbursement Request for eligible Project Costs as specified in this Exhibit from the Project Costs through submission to the State Water Board using the Reimbursement Request form provided by the Project Manager. To be eligible for reimbursement, Project Costs, including planning and design allowance costs, must have been incurred in compliance with all applicable requirements, including the state cross-cutting requirements listed in Exhibit D.

- (2) Reimbursement Requests must contain the following information:
 - a. The date of the request;
 - b. The time period covered by the request, i.e., the term “from” and “to”;
 - c. The total amount requested;
 - d. 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
 - e. 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 must be submitted NO LATER THAN the Annual Reimbursement Request Deadline.
- (3) 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.
- (4) 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 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.
- (5) 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.
- (6) The Recipient agrees that it will not submit any Reimbursement 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 Reimbursement Request. Supporting documentation (e.g., receipts, laboratory invoices) must be submitted with each Reimbursement Request as well as to support Match Contribution 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.

- (7) The Recipient will not seek reimbursement of any Project Costs that have been reimbursed from other funding sources.
 - (8) The Recipient must use Project Funds within 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.
 - (9) 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.
 - (10) 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.
 - (11) The Recipient agrees that it will not request a reimbursement unless that cost is allowable, reasonable, and allocable.
 - (12) 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.
 - (13) The Recipient agrees that it shall not be entitled to interest earned on undisbursed Project Funds.
 - (14) The Recipient must include any other documents or requests required or allowed under this Agreement.
- (b) 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.8 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 may revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance may be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS 2019-NOV is posted at https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html and replicated below:

1. DEFINITIONS. Unless otherwise specified in this Agreement, each capitalized term used in this Agreement has the following meaning:
 - “Agreement” means this agreement, including all exhibits and attachments hereto.
 - “Cover Page” means the front page of this Agreement.
 - “Days” means calendar days unless otherwise expressly indicated.
 - “Deputy Director” means the Deputy Director of the Division.
 - “Division” means the Division of Financial Assistance of the State Water Board or any other division or unit of the State Water Board authorized to administer this Agreement.
 - “Event of Default” means the occurrence of any of the following events:
 - (a) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
 - (b) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
 - (c) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient’s property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient’s entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient’s existence, or any action in furtherance of any of the foregoing;
 - (d) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or
 - (e) Loss of the Recipient’s rights, licenses, permits, or privileges necessary for the Project, or the occurrence of any material restraint on the Recipient’s enterprise by a government agency or court order.

- “Final Reimbursement Request Date” means the date set forth as such on the Cover Page of this Agreement, after which date, no further reimbursements or disbursements may be requested.
- “Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year.
- “GAAP” means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.
- “Material Obligation” means an obligation of the Recipient that is material to this transaction.
- “Party Contact” means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Division staff set forth in Section 2 of this Agreement.
- “Project” means the Project funded by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.
- “Project Completion” means, as determined by the Division, that the Project is complete to the reasonable satisfaction of the Division.
- “Project Costs” means the incurred costs of the Recipient which are eligible for funding under this Agreement, pursuant to applicable statutes, policy, regulations, or guidelines.
- “Project Funding Amount” means the maximum amount payable under this Agreement, as set forth on the Cover Page.
- “Project Funds” means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.
- “Project Manager” means the person designated by the State Water Board to manage performance of this Agreement. The Project Manager is set forth on the Cover Page.
- “Records Retention End Date” means the last date that the Recipient is obligated to maintain records related to this Agreement and is set forth on the Cover Page of this Agreement.
- “Regional Water Quality Control Board” or “Regional Water Board” means the appropriate Regional Water Quality Control Board.

- “Reimbursement Period” means the period during which Project Funds may be disbursed.
 - “Reimbursement Request” means the Recipient’s request for Project Funds from the State Water Board as set forth in Exhibit B.
 - “State” means State of California.
 - “State Water Board” means the State Water Resources Control Board.
 - “Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A for review and approval by the Division.
 - “Work Completion Date” means the date set forth on the Cover Page of this Agreement and is the last date on which Project Costs may be incurred under this Agreement.
 - “Year” means calendar year unless otherwise expressly indicated.
2. ACCESS, INSPECTION, AND PUBLIC RECORDS. The Recipient must ensure that the State Water Board, the State Auditor, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times through the Records Retention End Date or useful life of the Project, whichever is longer. The Recipient acknowledges that, except for a subset of information regarding archaeological records and personally identifiable information, the Project records and locations may be public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, Reimbursement Requests, and supporting documentation submitted hereunder.
3. ACCOUNTING AND AUDITING STANDARDS; FINANCIAL MANAGEMENT SYSTEMS. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets. Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
- (a) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
 - (b) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Project Funds received under this Agreement;
 - (c) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Project Funds disbursed under this Agreement;
 - (d) Establish an accounting system which will accurately depict final total costs of the Project if authorized under this Agreement;

- (e) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
 - (f) If the Recipient uses its own employees, equipment, or resources for any phase of the Project, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
4. AMENDMENT. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee and approved as required.
 5. ASSIGNABILITY. This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board. Amendment of the Agreement may be required.
 6. AUDIT. The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of State or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division. The Recipient must return, or ensure the return of, any audit disallowances within 30 days.
 7. BONDING. Where construction contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.
 8. COMPETITIVE BIDDING. Recipient must adhere to any applicable State law or local ordinance for competitive bidding and applicable labor laws. If Recipient is a private entity, any construction contracts related in any way to the Project must be let by competitive bid procedures which assure award of such contracts to the lowest responsive and responsible bidders. Recipient must not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the Division. Recipient must provide a full explanation if Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.
 9. COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REQUIREMENTS. The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements and with provisions of the adopted environmental mitigation plan, if any, for the useful life of the Project.
 10. COMPUTER SOFTWARE. The Recipient certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this

Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

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

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

16. FINAL REIMBURSEMENT REQUEST. The Recipient agrees to ensure that its final Reimbursement Request is received by the Division no later than the Final Reimbursement Request Date, unless prior approval has been granted by the Division. If the final Reimbursement Request is not received timely, the undisbursed balance of this Agreement may be deobligated.
17. FRAUD AND MISUSE OF PUBLIC FUNDS. All requests for disbursement must be accurate and signed by the Recipient or its Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.
18. FUNDING CONTINGENCY. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement. The State Water Board's obligation to disburse funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by

Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

19. **GOVERNING LAW.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
20. **RECIPIENT'S SHARE.** The Recipient agrees that it will provide for the payment of its full share, if any share is required, of Project Costs and that all costs connected with the Project will be timely paid by the Recipient.
21. **INDEMNIFICATION AND STATE REVIEWS.** The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the

defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.

22. **INDEPENDENT ACTOR.** The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.
23. **INSPECTION.** Throughout the useful life of the Project, the State Water Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.
24. **INTEGRATION.** This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.
25. **LIENS.** The Recipient must not make any pledge of or place any lien on the Project or Project assets except upon consent of the Division.
26. **NO DISCRIMINATION.** The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 14000 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project. If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property. The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b). The Recipient's obligations under this section shall survive the term of this Agreement. During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status. The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing

Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

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

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

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

32. **PREVAILING WAGES.** If applicable, the Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. If applicable, the Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the applicable prevailing wage provisions of the State Labor Code are being met. Division of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
33. **PRIOR COSTS.** No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
34. **PROFESSIONALS.** The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
35. **RECORDS, INSPECTION, AUDITS, AND INTERVIEWS; RECORDS RETENTION.** The Recipient must maintain separate books, records and other material relative to the Project and retain such books, records, subcontracts, and other material until at least the Records Retention End Date set forth on the Cover Page of this Agreement. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Department of Finance, the California State Auditor, the Bureau of State Audits, or any authorized representatives of the aforementioned, including federal funding agencies and their auditors, if any. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.
36. **RELATED LITIGATION.** Under no circumstances may the Recipient use funds from any reimbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

37. **REMEDIES.** The State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy. Any dispute of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the procedures provided to the Recipient under this Agreement.
38. **REPORTS - AS NEEDED.** The Recipient must provide expeditiously any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the State or federal government.
39. **RESPONSIBILITY FOR WORK.** The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project, including, but not limited to, payment disputes with contractors and subcontractors. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.
40. **RIGHTS IN DATA.** The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. The Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
41. **STATE WATER BOARD ACTION; COSTS AND ATTORNEY FEES.** In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.
42. **STATUS QUO.** If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights, and remedies as if no such action had been brought.

43. **TERMINATION, IMMEDIATE REPAYMENT, AND INTEREST:** This Agreement may be terminated by written notice at any time, at the option of the State Water Board, if:

- a. the Recipient has received funds as a result of a material misrepresentation in the funding application or other submitted document; or
- b. upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board.

In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of Project Funds disbursed to the Recipient prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.

44. **TIMING.** Time is of the essence. The Recipient must expeditiously proceed with and complete the Project. Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.

45. **TRAVEL AND PER DIEM.** No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. No work or travel outside the United States of America is authorized. Failure to comply with this restriction may constitute an Event of Default and result in termination of this Agreement. Any reimbursement for necessary travel and per diem shall be set pursuant to and at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>, as of the date costs are incurred by the Recipient.

46. **UNDISBURSED FUNDS.** The Recipient is not entitled to interest earned on undisbursed funds.

47. **UNENFORCEABLE PROVISION; SEVERABILITY.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

48. **UNION ACTIVITIES:** The Recipient hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement. The Recipient certifies that none of the Project Funds will be used to assist, promote, or deter union organizing. If the Recipient incurs costs or makes expenditures to assist, promote, or deter union organizing, the Recipient will maintain records sufficient to show that no reimbursement from Project Funds has been sought for these costs and the Recipient shall provide those records to the Attorney General upon request.

49. **VENUE.** Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

50. WAIVER AND RIGHTS OF THE STATE WATER BOARD. Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
51. WATER CONSERVATION AND EFFICIENCY PROGRAMS: The Recipient acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of this Agreement. A web link with examples of water conservation and efficiency programs is available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml.
52. WATER DIVERSION AND USE: To the extent applicable, the Recipient has complied with, and shall continue to comply with, the requirements of Water Code, division 2, part 5.1, section 5100 et seq. for filing statements of water diversion and use.
53. WITHHOLDING OF DISBURSEMENTS AND REIMBURSEMENTS. Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:
- a) Failure of the Recipient to maintain reasonable progress on the Project as determined by the Division;
 - b) Commencement of litigation or a judicial or administrative proceeding related to the Project, or Recipient that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
 - c) Any investigation by State, local, or federal investigators or auditors, or a grand jury, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
 - d) A material adverse change in the condition of the Recipient, or the Project, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
 - e) The Recipient's material violation of, or threat to materially violate, any provision of this Agreement;
 - f) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents directly or indirectly regarding the Project;
 - g) An event requiring notice under this Agreement; or
 - h) An Event of Default or an event that the Division determines may become an Event of Default.

EXHIBIT D – SPECIAL CONDITIONS

D.1 DEFINITIONS.

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

- “Annual Reimbursement Request Deadline” means 31 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; and
 - (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.
- “Quality Assurance Documentation” means those documents associated with Quality Assurance and Quality Control for the Project, including Quality Assurance Program Plan, Quality Management Plan, and Quality Assurance Project Plan.
- “WDPF” means the Waste Discharge Permit Fund.

D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

- (a) 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.
- (b) 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) 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.
- (d) 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, or if resolved unfavorably to the

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

- (e) 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.
- (f) 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 years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
- (g) 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.
- (h) 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 legally possesses property access rights to any real or personal property necessary for the purposes of this Agreement for which the Recipient does not legally possess all real or personal property rights. 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.
- (i) 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.

- (a) The Recipient must notify the Division and Party Contacts promptly of the occurrence of any of the following events:
- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
 - iii. Loss, theft, damage, or impairment to Project;
 - iv. Events of Default, except as otherwise set forth in this section;
 - v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
 - vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence, or any judgment or court order relating to such litigation that has a significant effect on the Project or the System;
 - vii. Consideration of dissolution, or disincorporation;
 - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
 - ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until

prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;

- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Work Completion for a period of ninety (90) days or more;
- xii. Any disputes related to the Project that may affect the Recipient's ability to comply with the terms of this Agreement;
- xiii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xiv. 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;
- xv. Any event requiring notice to the Division pursuant to any other provision of this Agreement; and
- xvi. 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 an administrative action by the State Water Board and/or referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in any submittal may be subject to a civil penalty, criminal fine, or imprisonment. (Wat. Code, § 13490 et seq.)

D.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 30 days to the

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

D.10 EXECUTIVE ORDER N-6-22 — RUSSIAN SANCTIONS.

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

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia's actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000)

or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

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

- (a) 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;
- (b) Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
- (c) Direct support to the government and people of Ukraine.

D.11 STATE PROGRAM REQUIREMENTS.

- (a) As applicable, the Recipient shall comply with the Open and Transparent Water Data Act (Water Code, section 12406) and with State Water Board Resolution No. 2018-0032. As a condition of receiving disbursements under this Agreement, the Recipient shall adhere to the protocols for data sharing, transparency, documentation and quality control developed by the Department of Water Resources, available at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/All-Programs/AB-1755/Protocols_for_AB1755_a_y19.pdf. As a condition of receiving disbursements under this Agreement, the Recipient shall also adhere to State Water Board's Strategic Data Action Plan developed pursuant to Resolution No. 2018-0032, available at https://www.waterboards.ca.gov/resources/data_databases/docs/sdap_draft.pdf.
- (b) 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.12 STATE CROSS-CUTTERS.

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

- The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
- The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
- Regulations in Division 4 of Title 22 of the California Code of Regulations, including but not limited to California Waterworks Standards in Chapter 16, and Lead and Copper regulations in Chapter 17.5.