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CITY OF MORRO BAY

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



WASTEWATER PLANNING LOAN

WATER RECLAMATION FACILITY PROJECT –PHASE 1

CLEAN WATER STATE REVOLVING FUND PROJECT NO. C-06-8185-110  
AGREEMENT NO. D16-01016

**AMENDMENT NO. 1**

AMOUNT: \$10,300,000

ELIGIBLE START DATE: DECEMBER 11, 2015

WORK COMPLETION DATE: MAY 1, 2019**NOVEMBER 1, 2019**

FINAL DISBURSEMENT REQUEST DATE: ~~DECEMBER 1, 2019~~**MARCH 1, 2020**

END DATE: ~~DECEMBER 1, 2029~~**NOVEMBER 1, 2029**

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**This Grant Agreement executed by the State Water Board on January 20, 2017, is hereby amended and restated, to revise Work Completion Date, revise Final Disbursement Date, revise End Term Date, revise Exhibits A, B, and BR.S (deletions shown as stricken and revisions in bold and underlined). Except as noted herein all other terms and conditions shall remain the same. Please note, page numbers may have changed.**

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## PLANNING LOAN

This Planning Loan, including all exhibits and attachments, (Agreement), by and between the State Water Resources Control Board (State Water Board), a state agency, and the City of Morro Bay, duly organized and existing under the laws of the State of California (Recipient) is dated as of the date this Agreement is signed by the Deputy Director of the Division of Financial Assistance.

### WHEREAS,

1. The State Water Board is authorized to provide funding under this Agreement pursuant to the following:
  - CWSRF - Chapter 6.5 of Division 7 of the California Water Code (State Act)
  - CWSRF - Title VI of the federal Water Pollution Control Act (Federal Act)
2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act and State Act, and establishes the terms and conditions of a funding agreement.
3. The Recipient has applied to the State Water Board for funding for the Planning described in Exhibit A of this Agreement and the State Water Board has selected the application for funding.
4. The State Water Board proposes to assist in financing the costs of the Planning, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Loan Repayments, which obligation will be secured by Net Revenues, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act

NOW, THEREFORE, in consideration of the premises, mutual representations, covenants and agreements in this Agreement, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree as follows:

#### 1. Definitions.

Unless otherwise specified, each capitalized term used in this Agreement (including the Exhibits hereto) has the following meaning:

"Additional Payments" means the Additional Payments described in Exhibit B of this Agreement.

"Agreement" means this Planning Loan, by and between the State Water Board and the Recipient, including all exhibits and attachments hereto.

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

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

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

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which Planning Costs may be incurred and eligible for reimbursement hereunder.

"Final Disbursement Request Date" means the date established in Exhibit B, after which date, no further Planning Funds disbursements may be requested.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

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

"GAAP" means generally accepted accounting principles, as issued by the Governmental Accounting Standards Board.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported pursuant to Rule 15c2-12(b)(5).

"Loan Repayments" means repayments due and payable by the Recipient to the State Water Board under this Agreement, the amounts of which are set forth as Exhibit B.RS hereto.

"Material Event" means any event that, as determined by the Division, might cause the State Water Board to violate the terms and conditions of its agreements with U.S. EPA or its bond covenants, including any of the following: (a) revenue shortfalls; (b) unscheduled draws on the Reserve fund, if any, or the Enterprise Fund; (c) substitution of insurers, or their failure to perform; (d) adverse findings by the Regional Water Quality Control Board; (e) litigation related to the Revenues, the System, or the Planning, whether pending or anticipated; (f) any false warranty or representation made by the Recipient relevant to this Agreement; (g) loss, theft, damage, or impairment to the Revenues or the System; (h) seizure of, or levy on any collateral securing this Agreement; (i) dissolution or cessation of operations by Recipient, termination of Recipient's existence, insolvency of Recipient, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Recipient; (j) any event set forth in section 6 of this Agreement.

"Material Obligation" means any senior or parity obligation of the Recipient payable from Revenues as identified as of the date of this Agreement in Exhibit F, this Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Loan Repayments and Additional Payments as provided herein.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses,

and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"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 Project Manager.

"Planning" means the Planning as described in Exhibit A and in the documents incorporated by reference.

"Planning Completion" means, as determined by the Division, that the Planning is complete to the reasonable satisfaction of the Division.

"Planning Costs" means the incurred costs of the Recipient which are eligible under this Agreement, which are allowable costs as defined under the Policy, and which are reasonable, necessary and allocable by the Recipient to the Planning under GAAP, plus capitalized interest.

"Planning Funds" means funds disbursed by the State Water Board to the Recipient for purposes of this Agreement.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, and the WRF Guidelines.

"Project Director" means an employee of the Recipient designated by the Authorized Representative to be responsible for the overall management of the administrative and technical aspects of the executed Agreement. The Project Director is set forth in Section 2 of this Agreement.

"Project Manager" means the person designated by the State Water Board to manage performance of the Agreement. The Project Manager is set forth in Section 2 of this agreement.

"Recipient" means the City of Morro Bay.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf.

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"SRF" means the Clean Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"System" means all wastewater collection, transport, treatment, storage, and disposal facilities, including land and easements thereof, owned by the Recipient, and all properties, structures, or works hereafter



acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed, and all wastewater, water recycling, and/or potable water collection, transport, treatment, storage, and/or disposal facilities, including land and easements thereof, owned by the Recipient, including all properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed. System includes the wastewater treatment plant existing at the time of this Agreement, which is jointly owned by the Recipient and the Cayucos Sanitary District pursuant to a Joint Powers Agreement dated October 25, 1982,, to the extent it is owned by the Recipient. "System Obligation" means any long-term obligation of the Recipient payable from the Enterprise Fund, including this Obligation and obligations reflected in Exhibit F hereto.

"Work Completion" means the Recipient's submittal of all work set forth under Exhibit A for review and approval by the Division. The Division may require corrective work to be performed prior to Planning Completion.

"Work Completion Date" means the date set forth in Exhibit A that is the last date on which Planning Costs may be incurred under this Agreement.

"WRF Guidelines" means the Water Recycling Funding Program Guidelines, as amended by the State Water Board on June 16, 2015.

"Year" means calendar year unless otherwise expressly indicated.

## 2. Party Contacts.

The Party Contacts during the term of this Agreement are:

<b>State Water Board</b>	<b>Recipient</b>
Section:	
Name: Jody Hack, Project Manager	Name: Rob Livick, Project Director
Address: 1001 I Street, 16 <sup>th</sup> Floor	Address: 955 Shasta Avenue
City, State, Zip: Sacramento, CA 95814	City, State, Zip: Morro Bay, CA 93442
Phone: (916) 341-5811	Phone: (805) 772-6261
Email: Jody.Hack@waterboards.ca.gov	Email: RLivick@morro-bay.ca.us

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

## 3. Exhibits and Appendices Incorporated.

The following exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement:

EXHIBIT A - SCOPE OF WORK  
EXHIBIT B - FUNDING PROVISIONS  
EXHIBIT B.RS - LOAN REPAYMENT SCHEDULE  
EXHIBIT C - STANDARD TERMS AND CONDITIONS  
EXHIBIT D - SPECIAL CONDITIONS  
EXHIBIT E - FEDERAL TERMS AND CONDITIONS  
EXHIBIT F - SCHEDULE OF SYSTEM OBLIGATIONS

Additionally, the following documents are incorporated by reference:

- (a) The Recipient's Plan of Study dated January 28, 2016.

#### 4. Recipient Representations and Commitments.

The Recipient represents, warrants, and commits to the following as of the date set forth on the first page hereof and continuing thereafter for the term of the Agreement:

- (a) General Commitments. The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.
- (b) Authorization and Validity. The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized. 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 or equity, including but not limited to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).
- (c) No Violations. The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the first page hereof.
- (d) No Litigation. There are no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Planning.
- (e) Solvency. None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. As of the date set forth on the first page hereof, Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. Recipient is able to pay its debts as they become due.
- (f) Legal Status and Eligibility. Recipient is duly organized and existing and in good standing under the laws of the State of California, and will remain so during the term of this Agreement. Recipient shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Recipient shall maintain its eligibility for funding under this Agreement for the term of this Agreement.
- (g) Specific Cross-Cutters. The Recipient is currently in compliance with the state requirements set forth in Exhibit C and the federal requirements set forth in Exhibit E.

#### 5. Work Completion.

The Recipient agrees to expeditiously proceed with and complete the Planning in accordance with this Agreement.

6. Notice.

- (a) The Recipient agrees to notify the Division in writing within five (5) working days of the occurrence of the following:
  - (1) Material defaults on this Obligation;
  - (2) Unscheduled draws on debt service reserves held for this Obligation, if any, reflecting financial difficulties;
  - (3) Bankruptcy, insolvency, receivership or similar event of the Recipient;
  - (4) Actions taken pursuant to state law in anticipation of filing for bankruptcy;
  - (5) Other Material Events or Listed Events;
  - (6) Change of ownership of the System or change of management or service contracts, if any, for operation of the System; or
- (b) The Recipient agrees to notify the Division within 10 working days of the following:
  - (1) Material defaults on System Obligations, other than this Obligation;
  - (2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
  - (3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties
  - (4) Substitution of credit or liquidity providers, if any or their failure to perform;
  - (5) Any litigation pending or threatened against Recipient regarding its wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Recipient's Revenues;
  - (6) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
  - (7) Rating changes on outstanding System Obligations, if any; or
  - (8) Issuance of additional parity obligations.
- (c) The Recipient agrees to notify the Division promptly of the following:
  - (1) Any proposed change in scope of the Planning;
  - (2) Cessation of work on the Planning where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - (3) 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 beyond the estimated date previously provided to the Division;

- (4) Any monitoring activities such that the State Water Board Division of Drinking Water and/or Regional Water Quality Control Board staff may observe and document such activities;
- (5) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days' notice to both the Division and USEPA Region IX. The contact for USEPA Region IX is Josh Amaris at Amaris.josh@epa.gov (415) 972-3597.
- (6) Work Completion.

#### 7. Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 11 of this Agreement. The Recipient agrees to make its findings available to the public and to request, if necessary, the authorization of the Recipient's decision-maker or decision-maker body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in Section 11 hereof and its obligation to operate and maintain the System for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding any such challenge.

#### 8. Planning Funds.

The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

#### 9. Obligation Absolute.

The obligation of the Recipient to make the Loan Repayments and other payments required to be made by it under this Agreement, from Net Revenues is absolute and unconditional, and until such time as the Loan Repayments and Additional Payments have been paid in full, the Recipient shall not discontinue or suspend any Loan Repayments or other payments required to be made by it hereunder when due, whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Loan Repayments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

The Recipient shall not be required to advance any moneys derived from any source of income other than Net Revenues and the other funds provided herein for the repayment of this obligation. The Recipient may advance moneys from other sources of income legally available to the Recipient and appropriated by the Recipient for repayment of this obligation. The Recipient's general fund is not pledged to repay this obligation. This is a special obligation of the Recipient and does not constitute a debt of the City of the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

#### 10. No Obligation of the State; State Budget Act Contingency.

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 appropriated by the State Legislature to the State Water Board from the special fund associated this Agreement.

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Recipient or to furnish any other considerations under this Agreement and Recipient shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for payment over any other recipient.

If this Agreement's funding for any Fiscal Year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Recipient to reflect the reduced amount.

11. Pledge; Rates, Fees and Charges; Additional Debt.

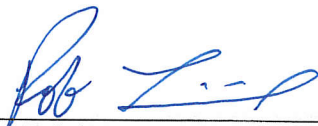
- (a) Establishment of Enterprise Fund and Reserve Fund. In order to carry out its Material Obligations, the Recipient agrees and covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in Exhibit D of this Agreement, the Recipient agrees to establish and maintain a Reserve Fund.
- (b) Pledge of Net Revenues, Enterprise Fund, and Reserve Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D in priority as specified in Exhibit F (senior, parity, or subordinate). The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund to secure the Obligation, including payment of Loan Repayments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund, shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding Material Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the Material Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.
- (d) Rates, Fees and Charges. The Recipient agrees, to the extent permitted by law, to fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to the debt service on System Obligations, including the Obligation, for such Fiscal Year, plus any coverage ratio specified in Exhibit D of this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
- (e) Additional Debt Test.
  - (1) Additional Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt,

the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the applicant's ability to repay its SRF obligations.

- (2) Additional Parity Debt. The Recipient's future debt that is secured by revenues pledged herein may be on parity with this Obligation if the reserve and coverage requirements in Exhibit D to this Agreement are met.

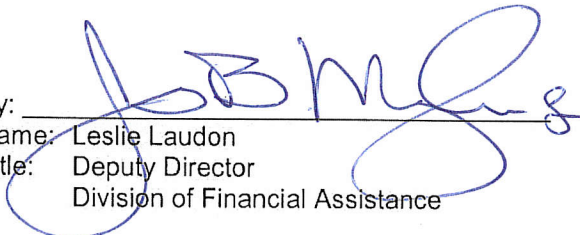
IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto.

**CITY OF MORRO BAY:**

By:   
Name: Rob Livick  
Title: Public Works Director/City Engineer

Date: 14 February 2019

**STATE WATER RESOURCES CONTROL BOARD:**

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

Date: 25 Feb 2019

## EXHIBIT A – SCOPE OF WORK

### A-1. Work Completion Date.

The Work Completion Date is established as ~~May 1, 2019~~ **November 1, 2019**. Work occurring after Work Completion Date, including corrective actions, are not eligible for reimbursement with Planning Funds.

### A-2. Planning Completion Date.

The Planning Completion date is established as ~~December 1, 2019~~ **June 30, 2020**. The Recipient shall deliver any request for extension of the Work Completion date no less than 90 days prior to the Work Completion date. The Division will not unreasonably deny such a timely request, but the Division may deny requests received after this time.

### A-3. Purpose.

The Planning is related to the possible construction project known as the Water Reclamation Facility Project-Phase 4 that has a projected useful life of 50 years. The Recipient's receipt of funding under this Agreement is not a commitment to and does not obligate the State Water Board to provide funding for any eventual construction/implementation project.

### A-4. Final Disbursement Request.

The Recipient agrees to ensure that its Final Disbursement Request is received by the Division no later than ~~December 31, 2019~~ **March 1, 2020** unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.

### A-5. Scope of Work and Planning Documents.

The Recipient agrees to do the following:

#### Project Objectives

The objective of the planning Project is to develop a plan and design of the City's Water Reclamation Facility.

#### Project Description

The Recipient will complete the planning, procurement, and design of Phase 1 of the Water Reclamation Facility Project. The design funding includes the following:

1. ~~Phase 1 Facility Master Plan~~ **Draft Concept Design Report**
2. (California Environmental Quality Act) CEQA Documents, Permits and Approvals
3. Procurement of Design/Build Contractor
4. Design of Lift Station/Transmission Mains
5. ~~Phase 1—Design of new Water Reclamation Facility~~ **Design of Water Reclamation Facility**
6. Program Management
7. Public Outreach
8. Program Administration

### A-6. Disclosure.

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



EXHIBIT A – SCOPE OF WORK

"Funding has been provided in full or in part through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

A-7. [Reserved]

A-8. Reporting.

- (a) Status Reports. The Recipient agrees to expeditiously provide progress reports pursuant to the schedule(s) in Exhibit A and/or Exhibit B and no less frequently than quarterly, starting with execution of this Agreement. Such reports shall accompany any disbursement request and shall be a condition precedent to any disbursement. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent complete, percent invoiced, and percent schedule elapsed; any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) As Needed Reports. The Recipient agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required and requested by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

A-9. [Reserved]

EXHIBIT A – SCOPE OF WORK

A-10. Planning Schedule.

DESCRIPTION OF WORK OR SUBMITTAL <u>ITEM</u>	<u>DESCRIPTION</u>	DRAFT <sup>1</sup>	FINAL
EXHIBIT A – SCOPE OF WORK			
Eligible Start Date	<u>N/A</u>	N/A	December 11, 2015
Draft Design, Facilities Planning Report Submittal <u>Draft Design, Project Concept Design Report (CDR)</u>	<u>CDR for Lift Station and Offsite Pipelines</u>	N/A <u>August 2018</u>	May 30, 2017 <u>October 2018</u>
	<u>CDR for Water Reclamation Facility Onsite Improvements</u>	<u>April 2019</u>	<u>May 2019</u>
Draft Value Engineering, UWMP, Environmental Documents review/submittal <u>Environmental Documents</u>	<u>Environmental Impact Report</u>	N/A <u>April 2018</u>	December 31, 2017 <u>June 2018</u>
100% Final Planning/Design submittal <u>Request for Proposals (RFP) Procurement of Design/Build (DB) Contractor, Draft, Final</u>	<u>RFP for DB Team for Water Reclamation Facility Onsite Improvements</u>	N/A <u>December 2017</u>	December 31, 2018 <u>January 2018</u>
<u>Design of Lift Station/Pipelines: 60%, 90%, Final</u>	<u>Plans and Specifications for lift station and offsite pipelines</u>	<u>November 2018, March 2019</u>	<u>June 2019</u>
Logos/Dislosures <u>Design of Water Reclamation Facility: 60%, 90%</u>	<u>Plans and Specifications for Water Reclamation Facility onsite work</u>	As necessary <u>June 2019</u>	As necessary <u>October 2019</u>
Status Reports	<u>N/A</u>	<u>N/A</u>	Quarterly
Work Completion Date	<u>N/A</u>	N/A	May 1, 2019 <u>November 1, 2019</u>
EXHIBIT B – FUNDING PROVISIONS			
Disbursement requests and Status Reports	<u>N/A</u>	Quarterly	
Final Disbursement Request	<u>N/A</u>	N/A	December 1, 2019 <u>March 1, 2020</u>

## EXHIBIT B – FUNDING PROVISIONS

### B-1. Estimated Reasonable Cost.

The estimated reasonable cost of the total Planning is ten million, three hundred thousand dollars and no cents (\$10,300,000.00).

### B-2. [Reserved]

### B-3. Planning Funding.

- (a) Subject to the terms of this Agreement, the State Water Board agrees to provide Planning Funds in the amount of up to ten million, three hundred thousand dollars and no cents (\$10,300,000.00).
- (b) Of the amount set forth in paragraph (a), the estimated amount of principal that will be due to the State Water Board under this Agreement is ten million, three hundred thousand dollars and no cents (\$10,300,000.00).
- (c) The Recipient agrees to repay all Planning Funds according to the schedule in Exhibit B.RS at an interest rate one and seven tenths (1.7%) per annum. The Recipient agrees to pay an Administrative Service Charge in lieu of interest as reflected in Exhibit B.RS. The Recipient agrees to pay a Small Community Grant Fund Charge in lieu of interest as reflected in Exhibit B.RS.

### B-4. Funding Dates.

- (a) The term of this agreement is from the Eligible Start Date on the cover page of this Agreement to the End Date of ~~December 1, 2029~~ **November 1, 2029**. THE RECIPIENT UNDERSTANDS THAT, REGARDLESS OF ANY INTENTION TO REFINANCE, THE TERMS OF THIS AGREEMENT, INCLUDING REPAYMENT OBLIGATIONS, SHALL BE ENFORCED UNLESS AND UNTIL THIS AGREEMENT IS AMENDED TO REFLECT ANY SUCH REFINANCING PRIOR TO THE PLANNING COMPLETION DATE IN SECTION (A-2) OF EXHIBIT A OF THIS AGREEMENT. It is the Recipient's intention to refinance this Agreement through SRF construction funding.
- (b) The Eligible Start Date is December 11, 2015. Otherwise eligible costs incurred prior to this date will not be reimbursed.
- (c) The Final Disbursement Request Date is ~~December 1, 2019~~ **March 1, 2020**. The Deputy Director of the Division may extend this date for good cause. All disbursement requests must be submitted to the Division such that they are received prior to this date. Late disbursement requests will not be honored.

### B-5. Funding Conditions and Exclusions.

- (a) This Agreement reflects Planning funding only. If the Recipient desires implementation/construction funding, the Recipient must complete the planning process, apply for for implementation/construction funding, and execute an implementation/construction funding agreement. Costs associated with the implementation/construction phase of the possible eventual implementation/construction project are not eligible for reimbursement under this Agreement.
- (b) A draft copy of the Planning documents acceptable to the Division shall be submitted to the Division prior to disbursement beyond 70% of the Planning Funds. A final copy shall be submitted, acceptable to the Division, prior to disbursement beyond 90% of the Planning Funds.

## EXHIBIT B – FUNDING PROVISIONS

### B-6. Budget Summary

TYPE OF WORK	PLANNING FUNDS	TOTAL COSTS
Facility Master Plan <b><u>Draft Concept Design Report</u></b>	\$800,000	\$800,000
CEQA Documents, Permits and Approvals	\$500,000	\$500,000
Procurement of Design/Build Contractor	\$300,000	\$300,000
Design of Lift Station & Transmission Mains	\$1,300,000	\$1,300,000
Design of new Water Reclamation Facility	\$3,800,000	\$3,800,000
Program Management	\$2,300,000	\$2,300,000
Public Outreach	\$500,000	\$500,000
Program Administration-City of Morro Bay	\$800,000	\$800,000
<b>TOTAL</b>	<b>\$10,300,000</b>	<b>\$10,300,000</b>

### B-7. Budget Flexibility.

Funds may be shifted between line items as approved by the Project Manager. The sum of adjusted line items shall not exceed the total budget amount.

### B-8. Amounts Payable by the Recipient.

- (a) Loan Repayments. Interest will accrue beginning with each disbursement. One year after Planning Completion, Loan Repayments of the principal of the Planning Funds, together with all interest accruing thereon, shall be repaid annually commencing on the date that is one (1) year after Planning Completion, and shall be fully amortized by the date specified in Exhibit B-4(a).

The Loan Repayments are based on a standard fully amortized assistance amount with equal annual payments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the Loan Repayment. Loan Repayment calculations will be made beginning one (1) year after Planning Completion. Exhibit B.RS is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

Upon Planning Completion and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient.

The Recipient agrees to make each Loan Repayment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred to the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other costs incurred. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

The Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the

EXHIBIT B – FUNDING PROVISIONS

payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

Each Loan Repayment shall be paid by check and in lawful money of the United States of America.

The Recipient agrees that it shall not be entitled to interest earned on undisbursed funds. Upon execution of this Agreement, the State Water Board shall encumber an amount equal to the Obligation. The Recipient hereby agrees to pay Loan Repayments and Additional Payments from Net Revenues. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement. The Recipient's general fund is not pledged to repay this obligation.

- (b) Planning Costs. The Recipient agrees to pay any and all costs connected with the Planning including, without limitation, any and all Planning Costs. If the Planning Funds are not sufficient to pay the Planning Costs in full, the Recipient shall nonetheless complete the Planning and pay that portion of the Planning Costs in excess of available Planning Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) Additional Payments. In addition to the Loan Repayments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

- (d) The Recipient may without penalty prepay all or any portion of the outstanding principal amount of the Obligation provided that the Recipient shall also pay at the time of such prepayment all accrued interest on the principal amount prepaid through the date of prepayment.

B-9. Disbursement of Planning Funds; Availability of Planning Funds.

- (a) The State Water Board's obligation to disburse Planning Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not

EXHIBIT B – FUNDING PROVISIONS

available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Planning Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other recipient. 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. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to the Recipient to reflect the reduced amount.

- (b) Except as may be otherwise provided in this Agreement, disbursement of Planning Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request disbursement for eligible Planning Costs as specified in this Exhibit from the Planning Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto.
  - (2) Requests must be complete and executed by the Recipient. Planning Costs incurred prior to the Eligible Start Date of this Agreement will not be funded. The Recipient must submit a disbursement request for costs incurred prior to the date the Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
  - (3) Additional Planning Funds must be requested monthly and will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due. Late disbursement requests may not be honored.
  - (4) The Recipient agrees that it will not request disbursement for any Planning Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request. Supporting documentation (e.g., receipts) must be submitted with each disbursement request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Planning Funds will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed disbursement request.
  - (5) The Recipient will not seek reimbursement of any Planning Costs that have been reimbursed from other funding sources.
  - (6) Recipient shall spend Planning Funds within 30 days of receipt. Any interest earned on Planning Funds shall be reported to the State Water Board and will either be required to be returned to the State Water Board or deducted from future disbursements. In the event that the Recipient fails to disburse Planning Funds to contractors or vendors within thirty (30) days from receipt of the funds, the Recipient shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the

EXHIBIT B – FUNDING PROVISIONS

date of mailing of funds to the State Water Board. If the Recipient held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.

- (7) Recipient shall request its final disbursement no later than the Final Disbursement Request Date specified herein unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
- (8) The Recipient agrees that it will not request a disbursement unless that cost is allowable, reasonable, and allocable.
- (9) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner that is in violation of or in conflict with federal or state laws, policies, or regulations.
- (10) The Recipient agrees that it shall not be entitled to interest earned on undisbursed planning funds.
- (11) [reserved]
- (12) Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Recipient. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Division.
- (13) The Recipient must include a certified original of the authorizing resolution designating the Authorized Representative by title with the first disbursement request, and any other documents or requests required or allowed under this Agreement.

B-10. Withholding of Disbursements and Material Violations.

- (a) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Planning Funds until Planning Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Planning Completion.
- (b) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
  - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - (2) The Recipient fails to maintain reasonable progress toward Planning Completion.
- (c) For the purposes of this Agreement, the terms "material violation" or "threat of material violation" include, but are not limited to:
  - (1) Placement on the ballot of an initiative or referendum to reduce Revenues;
  - (2) Passage of such an initiative or referendum;

EXHIBIT B – FUNDING PROVISIONS

- (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure Revenues; or
- (14) Any other action or lack of action that may be construed by the Division as a material violation or threat thereof.

B-11. Remaining Balance.

In the event the Recipient does not request all of the funds encumbered under this Agreement, any remaining funds revert to the State.

B-12. Fraud and Misuse of Public Funds.

All requests for disbursement submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Recipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of Planning Funds and/or termination of this Agreement requiring the 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. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)



EXHIBIT B.RS –LOAN REPAYMENT SCHEDULE

See the attached preliminary Loan Repayment Schedule dated ~~November 7, 2016~~. The final Loan Repayment Schedule will be forwarded to the Recipient after all disbursements have been paid and Planning has been completed.

**California CWSRF Payment Schedule**

Project No. 8185-110 - Morro Bay, City of  
 Agreement: D1601016 - based on Actual + Projected Disbursements

Water Reclamation Facility Project - Phase I

Principal is paid over: 10 Years  
 Interest rate: 1.700000%

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	11/1/2020		960,338.11	1.700	167,591.82	1,127,929.93	1,127,929.93	9,339,661.89	0.00
2	11/1/2021		969,155.68	1.700	158,774.25	1,127,929.93	1,127,929.93	8,370,506.21	0.00
3	11/1/2022		985,631.32	1.700	142,298.61	1,127,929.93	1,127,929.93	7,384,874.89	0.00
4	11/1/2023		1,002,387.06	1.700	125,542.87	1,127,929.93	1,127,929.93	6,382,487.83	0.00
5	11/1/2024		1,019,427.64	1.700	108,502.29	1,127,929.93	1,127,929.93	5,363,060.19	0.00
6	11/1/2025		1,036,757.91	1.700	91,172.02	1,127,929.93	1,127,929.93	4,326,302.28	0.00
7	11/1/2026		1,054,382.79	1.700	73,547.14	1,127,929.93	1,127,929.93	3,271,919.49	0.00
8	11/1/2027		1,072,307.30	1.700	55,622.63	1,127,929.93	1,127,929.93	2,199,612.19	0.00
9	11/1/2028		1,090,536.52	1.700	37,393.41	1,127,929.93	1,127,929.93	1,109,075.67	0.00
10	11/1/2029		1,109,075.67	1.700	18,854.29	1,127,929.96	1,127,929.96	0.00	0.00
			<b>10,300,000.00</b>		<b>979,299.33</b>	<b>11,279,299.33</b>	<b>11,279,299.33</b>		<b>0.00</b>

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-1. Accounting and Auditing Standards.

The Recipient must maintain planning accounts according to GAAP. The Recipient shall maintain GAAP-compliant planning accounts, including GAAP requirements relating to the reporting of infrastructure assets.

C-2. Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral or written understanding or agreement not incorporated in this Agreement is binding on any of the parties.

C-3. Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part.

C-4. Audit.

(a) The Division, at its option, may call for an audit of financial information relative to the Planning, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of state or federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.

(b) Audit disallowances will be returned to the State Water Board.

C-5. [Reserved]

C-6. Claims.

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

C-7. [Reserved]

C-8. Compliance with Law, Regulations, etc.

The Recipient agrees that it will, at all times, comply with and require its contractor and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Recipient agrees that, to the extent applicable, the Recipient will:

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the State Water Board's Policy;
- (c) Comply with and require compliance with the list of state laws (cross-cutters) in Section C-31 of this Agreement.
- (d) Comply with and require its contractors and subcontractors to comply with the list of federal laws (cross-cutters) attached as Exhibit E.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-9. Conflict of Interest.

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

C-10. Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, including Bonds issued on behalf of the State Water Board, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach. In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Planning Funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C-11. Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

C-12. Financial Management System and Standards.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal or state government and tracking of Planning funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient agrees to be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto, including but not limited to Section 210(a)-(d). (Pub. L. 98-502.)

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-13. Governing Law.

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

C-14. Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State under this Agreement.

C-15. Indemnification and State Reviews.

The parties agree that review or approval of Planning documents by the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to engage in proper planning. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, and its officers, employees, and agents (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 System or the Planning 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 System or the Planning 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 System; 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. 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 shall survive the term of this Agreement and the discharge of the Recipient's Obligation hereunder.

C-16. Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

C-17. Integration.

This Agreement is the complete and final Agreement between the parties.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-18. Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall 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.
- (b) The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall 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.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

C-19. No Third Party Rights.

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

C-20. [Reserved]

C-21. Other Assistance.

If federal or state funding for Planning Costs is made available to the Recipient from sources other than this Agreement, the Recipient shall notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's local share of Planning Costs. To the extent allowed by requirements of other funding sources, any funding received in excess of the Recipient's local share, not to exceed the total amount funded under this Agreement, shall be remitted to the State Water Board to be applied to Loan Repayments due hereunder, if any, if permitted by law.

C-22. Permits.

The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. Recipient shall 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.

C-23. Public Records.

The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Planning records and locations are public records, including but not limited to all of the submissions

EXHIBIT C – STANDARD TERMS AND CONDITIONS

accompanying the application, all of the documents incorporated by reference into this Agreement, and all reports, disbursement requests, and supporting documentation submitted hereunder.

C-24. Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met. In addition, the Recipient agrees to comply with the Davis-Bacon provisions of Exhibit E.

C-25. Professionals.

The Recipient agrees that only professionals with valid licenses in the State of California 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, or design, or other work requiring interpretation and proper application of engineering or geologic sciences shall be prepared by or under the direction of persons registered to practice in California. All technical reports must contain the statement of the qualifications of the responsible registered professional(s). Technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

C-26. Public Funding.

This Planning is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

C-27. Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Planning. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

C-28. Records.

Without limitation of the requirement to maintain Planning accounts in accordance with GAAP, the Recipient agrees to:

- (c) Establish an official file for the Planning which shall adequately document all significant actions relative to the Planning;
- (d) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Planning, including all assistance funds received under this Agreement;
- (e) Establish separate accounts which will adequately depict all income received which is attributable to the Planning, specifically including any income attributable to assistance funds disbursed under this Agreement;

EXHIBIT C – STANDARD TERMS AND CONDITIONS

- (f) Establish an accounting system which will accurately depict final total costs of the Planning, including both direct and indirect costs;
- (g) 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
- (h) If Force Account is used by the Recipient for the Planning, accounts will be established which reasonably document all employee hours charged to the Planning and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (i) Maintain separate books, records and other material relative to the Planning.
- (j) Retain such books, records, and other material for itself and for each contractor or subcontractor who performed work on this Planning for a minimum of thirty-six (36) years after Planning Completion. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall 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 right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement. The provisions of this section shall survive the discharge of the Recipient's Obligation hereunder and shall survive the term of this Agreement.

C-29. Related Litigation.

A Recipient is prohibited from using funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues. Regardless of whether the Planning or any eventual project is the subject of litigation, the Recipient agrees to complete the Planning funded by the Agreement or to repay all Planning Funds plus interest to the State Water Board.

C-30. Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

C-31. State Cross-Cutter Compliance.

Recipient represents and certifies that, to the extent applicable, it is in compliance with the following conditions precedent and agrees that it will continue to maintain compliance during the term of this Agreement:



EXHIBIT C – STANDARD TERMS AND CONDITIONS

- (a) State Water Board's Drought Emergency Water Conservation regulations. Title 23, article 22.5 of the California Code of Regulations.. The Recipient will include a discussion of its implementation in Progress Reports submitted pursuant to this Agreement.
- (b) California Environmental Quality Act (CEQA). Implementation and construction activities must comply with CEQA and potentially other environmental review requirements, including the National Environmental Policy Act (NEPA). Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
- (c) Water Code section 5103, subdivision (e)(2)(A). If Recipient is a water diverter, Recipient must maintain compliance by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.
- (d) Labor Code sections 1725.5 and 1771.1. To bid for public works contracts, Recipient acknowledges that Recipient and Recipient's subcontractors must register with the Department of Industrial Relations.
- (e) Water Code sections 526 and 527, applicable to an "urban water supplier" as defined by Water Code section 10617.
- (f) Urban Water Management Planning Act (Water Code, § 10610 et seq.). If Recipient is an "urban water supplier" as defined by Water Code section 10617, the Recipient certifies that it has submitted an Urban Water Management Plan that has been deemed complete by the Department of Water Resources and is in compliance with that plan. This shall constitute a condition precedent to this Agreement.
- (g) If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must comply with water conservation measures established by SBx7-7. (Water Code, Sec. 10608.56.)
- (h) Delta Plan Consistency Findings. Water Code section 85225 and California Code of Regulations, title 23, section 5002. If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient will submit a certification of project consistency with the Delta Plan to the Delta Stewardship Council prior to undertaking the implementation/construction project associated with this Planning.
- (i) Agricultural Water Management Plan Consistency. Water Code section 10852.
- (j) Charter City Project Labor Requirements. Labor Code section 1782 and Public Contract Code section 2503:

(1) Prevailing Wage

Recipient certifies that no charter provision nor ordinance authorizes a construction project contractor not to comply with Labor Code's prevailing wage rate requirements, nor, within the prior two years (starting from January 1, 2015 or after) has the city awarded a public works contract without requiring the contractor to comply with such wage rate requirements according to Labor Code section 1782.

(2) Labor Agreements

EXHIBIT C – STANDARD TERMS AND CONDITIONS

Recipient certifies that no charter provision, initiative, or ordinance limits or constrains the city's authority or discretion to adopt, require, or utilize project labor agreements that include all the taxpayer protection antidiscrimination provisions of Public Contract Code section 2500 in construction projects, and that Recipient is accordingly eligible for state funding or financial assistance pursuant to Public Contract Code section 2503.

C-32. State Water Board Action; Costs and Attorney Fees.

The Recipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Planning, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

C-33. Termination; Immediate Acceleration; Interest.

- (a) This Agreement may be terminated at any time prior to the End Date set forth on the cover and in Exhibit B, at the option of the State Water Board, 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 Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Planning Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. 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 all monies due have been received by the State Water Board.

C-34. Timeliness.

Time is of the essence in this Agreement.

C-35. Unenforceable Provision.

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

C-36. Venue.

The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

C-37. 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 the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

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

EXHIBIT D — SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Financial Special Conditions as follows:

Recipient shall establish and maintain rate and charges sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and shall ensure that Net Revenues are equal to at least 1.10 times the annual debt service in each year during the term of this Agreement.

CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

Where Recipient is a public entity, Recipient acknowledges its responsibility to file debt obligations with the CDIAC. Recipient understands that CDIAC has waived filing fees for State Water Board SRF debt.

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

A. Federal Award Conditions

1. American Iron and Steel. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
2. Wage Rate Requirements (Davis-Bacon). The Recipient shall include in full the language provided in Section E of this Exhibit in all contracts and subcontracts.
3. Signage Requirements. The Recipient shall comply with the USEPA's Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, dated June 3, 2015, as otherwise specified in this Agreement.
4. Public or Media Events. The Recipient shall notify the State Water Board and the EPA contact as provided in the notice provisions of this Agreement of public or media events publicizing the accomplishment of significant events related to this Planning and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
5. EPA General Terms and Conditions (USEPA GTCs). The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:
  - a. DUNS. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
  - b. Executive Compensation. The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, as set forth in the USEPA GTCs.
  - c. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall certify that it and its principals, and shall obtain certifications from its contractors that they and their principals:

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

- d. Conflict of Interest. Within 10 days, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with section 4.0 of with USEPA's Revised Interim Financial Assistance Conflict of Interest Policy at [http://www.epa.gov/ogd/epa\\_revised\\_interim\\_financial\\_assistance\\_coi\\_policy\\_5\\_22\\_15.htm](http://www.epa.gov/ogd/epa_revised_interim_financial_assistance_coi_policy_5_22_15.htm). A conflict of interest may result in disallowance of costs.
- e. Copyright. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- f. Credit. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:
  - "This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document."
- g. Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Planning.

- h. **Trafficking in Persons.** The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds in the amount of \$101,065,000. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement and full payment will be due immediately, if a Recipient or subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.
- B. **Super Cross-Cutters - Civil Rights Obligations.** The Recipient must comply with the following federal non-discrimination requirements:
- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (EPH XC HB)
  - Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (EPH XC HB)
  - The Age Discrimination Act of 1975, which prohibits age discrimination. (EPH XC HB)
  - Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex. (EPH XC HB)
  - 40 CFR Part 7, as it relates to the foregoing (EPH XC HB)
- C. **WRRDA Conditions**
- **Architectural and engineering contracts.** Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
  - **Fiscal sustainability.** The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the System that includes an inventory of critical assets that are a part of the System, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing any SRF-funded project and a plan for funding such activities.

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

D. Cross-Cutters

- a) Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Planning the following provisions:

*"During the performance of this contract, the contractor agrees as follows:*

*"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.*

*"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.*

*"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*



EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

*"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."*

- b) Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at [www.epa.gov/osbp](http://www.epa.gov/osbp). The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)
- c) Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers listed on the Excluded Parties Listing System: <http://epls.arnet.gov/>.
- d) Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- e) Debarment and Suspension Executive Order No. 12549 (1986). The Recipient certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Planning. Contractors on the Planning must provide a similar certification prior to the award of a contract and subcontractors on the Planning must provide the general contractor with the certification prior to the award of any subcontract.

**E. DAVIS-BACON**

For or purposes of this Section E, "subrecipient" or "sub recipient" means the Recipient as defined in this Agreement. For purposes of this Section E only, "recipient" means the State Water Board.

**I. Requirements For Sub recipients That Are Governmental Entities:**

If a sub recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award

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official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in

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section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of

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Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for

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the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be



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made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the USEPA and the Department of Labor and the State Water Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors' and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

EXHIBIT F — SCHEDULE OF SYSTEM OBLIGATIONS

Except for the following and the Obligation evidenced by this Agreement, the Recipient certifies that it has no outstanding System Obligations and that it is in compliance with all applicable additional debt provisions of the following:

The following outstanding debt is senior to the Obligation:

Title	Notional Amount	End Date
None.		

The following outstanding debt is on parity with the Obligation:

Title	Notional Amount	End Date
None.		

The following outstanding debt is subordinate to the Obligation:

Title	Notional Amount	End Date
None.		