

San Geronio Pass Water Agency

DATE: March 14, 2022
TO: Board of Directors
FROM: Lance Eckhart, General Manager
BY: Lance Eckhart, General Manager
SUBJECT: DISCUSSION OF AN AGREEMENT FOR PROVIDING GAP FUNDING TO CABAZON RELATED TO APPROVED PROPOSITION 68 AND PROPOSITION 1 GRANTS

RECOMMENDATION

The Board to enter into an Agreement with the Cabazon Water District to provide gap funding support to utilize Proposition 68 and Proposition 1 grants.

PREVIOUS CONSIDERATION

- February 14, 2022: The Board directed staff to develop a gap funding agreement with the Cabazon Water District (District) to assist in utilizing awarded grant funding.

BACKGROUND, ANALYSIS & FISCAL IMPACT

Please refer to the attached February 14, 2022 staff report regarding providing gap funding for the District to assist with grant funding implementation. The February 14, 2022 report discusses the background, analysis, and fiscal impact estimates for a potential gap funding agreement.

At the February 14, 2022 Board meeting, the Board directed staff to prepare a gap funding agreement between the Agency and the District. A copy of the proposed gap funding agreement with the Cabazon Water District is attached.

FISCAL IMPACT

Please refer to the detailed comments in the February 14 staff report. In summary, the Agency has sufficient reserves to supply the gap funding needs of an additional cash flow requirement of an estimated average of \$500,000 for the expected short duration of the project(s).

ACTION

Enter into an agreement for providing gap funding to the Cabazon Water District related to approved Proposition 68 and Proposition 1 grants.

ATTACHMENTS

- February 14, 2022 Staff report on a potential gap funding agreement
- Agreement for providing gap funding to Cabazon Water District related to approved Proposition 68 and Proposition 1 grants.

San Geronio Pass Water Agency

DATE: February 14, 2022

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Lance Eckhart, General Manager

SUBJECT: DISCUSSION OF A POTENTIAL AGREEMENT WITH THE CABAZON WATER DISTRICT TO ASSIST WITH THE UTILIZATION OF AUTHORIZED GRANT FUNDING – INFORMATION ONLY

RECOMMENDATION

Staff plans to brief the Board on the status of discussions and the potential for an agreement with the Cabazon Water District to provide Proposition 68 and Proposition 1 grant program gap funding. Staff would like to receive direction from the Board to develop an agreement for consideration at a future Board meeting.

BACKGROUND

The City of Banning (City) acts as the regional administrator of the area's Integrated Regional Water Management Plan ([IRWMP](#)). The IRWMP is a collaborative planning document that helps align regional resources and attract grant funds. City staff informed Agency staff that the Cabazon Water District (District) had participated in the IRWMP process and had been successful in receiving IRWMP grant funds through the Department of Water Resources (DWR) as well as a separate grant through the State Water Resources Control Board (SWRCB). City staff explained that although Cabazon had been approved for two separate grants and was ready to execute the work, cash flow to fund the work between reimbursement cycles was a challenge. District staff was contacted and the cash flow challenges of utilizing authorized grant funds were confirmed.

Funding reimbursement cycles can be protracted resulting in the grant recipient having to utilize reserves to fund work and then wait for reimbursement from the state. For smaller water systems located in Disadvantaged Communities such as the District, reserves may be inadequate to initiate grant-funded work due to cash flow timing. Work on both grants is scheduled for early 2022 compounding the cash flow issues for the District. Due to the risk of having inadequate reserves to fund the work, the District was contemplating not being able to perform the work and return one or both grants due to cash flow concerns. A brief summary of each grant is as follows:

Well Improvements Project - Test well, well refurbishment design & I-10 transmission line design.

Funding: Proposition 68, State Revolving Fund

Grant Agency: State Water Resources Control Board (SWRCB)

Grant Amount: \$499,000, 100% grant-funded.

Project Manager: Krieger & Stewart, Inc.

Timeline: 12-months but flexible

Status: Ready to bid

Isolation Valve Improvement Project – Installation of 105 valves

Funding: Proposition 1, Integrated Regional Water Management

Grant Agency: California Department of Water Resources (DWR)

Grant Amount: \$1,230,000, 100% grant-funded.

Project Manager: Krieger & Stewart, Inc.

Timeline: 16 to 18-months but flexible

Status: Ready to bid

Work associated with both of these grants will help modernize the District's system. Importantly, this work helps the District avoid system water losses and better defines future production and supply management. A more managed and resilient water system in the area is important for future planning efforts. Future recharge in the area was recently identified as a potential Agency management action and was included as part of the recently adopted [San Geronio Pass Groundwater Sustainability Plan](#). If the aforementioned grant-funded work was not conducted and the grant monies were returned to the funding entities, this could reflect poorly on future area grant opportunities and makes investment in the region difficult (e.g. construction of recharge facilities) if currently planned work cannot be implemented on a local scale, even if fully funded.

ANALYSIS

Agency staff contacted the grant administrators from the DWR and SWRCB in late December and early January to discuss options to utilize awarded grant funding. Both entities expressed the challenges of working with small water districts located in Disadvantaged Communities. Both of the grant administrators had indicated that “gap funding” by regional entities has become a common and often necessary component for smaller water systems to utilize state funding. Some of the industry trends with regard to providing support for underserved and disadvantaged water systems are well documented in:

[Water Education Foundation: Solving Water Challenges in Disadvantaged Communities](#)

A handbook to understanding the issues in California and Best Practices for Engagement

[Community Water Systems Alliance](#)

Case Studies: Regional Agency Assistance for Small Water Systems

Both DWR and the SWRCB were supportive of a regional entity assisting grant implementation for smaller systems within their service areas that find it hard to utilize available funding due to resource constraints. The funding entities acknowledged to staff that similar regional agency support is becoming more commonplace across the state and often considered a critical element in getting designated grant funds to Disadvantaged Communities. DWR and SWRCB grant administrators offered to expedite reimbursements if possible and be flexible with grant timelines.

Staff has been working with the District's engineering consultant Krieger & Stewart to try to estimate a reasonable amount of gap funding needed between reimbursement cycles. Work associated with both grants is expected to range from an average of approximately \$300,000 per quarter to a high of approximately \$500,000 for one quarter. Grant reimbursements can be as fast as 90-days (~one quarter) but can take up to 6-months (~two quarters). Work associated with both grants is expected to take approximately a little over a year.

An agreement between the Agency and the District would be appropriate to define roles, responsibilities, and expectations between the District and the Agency. Such an agreement would also document the public purpose and interests of the Agency being served by engaging in such a transaction.

During the gap funding period, staff intends to work closely with the District, their consultant, and the funding entities to keep reimbursement cycles as efficient as possible. An Agency ad-hoc committee may also be designated to get regular updates on the status of the District's grant(s).

FISCAL IMPACT

The fiscal impact would be related to the advancement of funds and the use of Agency resources to process the loan and obtain repayment. The Agency has available reserves to provide gap funding to assist with grant implementation. Some staff time will need to be allocated to this program but it is not considered material. Gap funding will be fairly short duration and staff is not recommending any compensation or interest income at this time for ease of administration of the program. A maximum gap funding amount is not expected to exceed \$800,000 and should average less than \$500,000 between reimbursement cycles.

ACTION

This is an informational item only and no binding Board action is being requested. Staff would like Board direction to work with local stakeholders and Agency counsel to proceed with discussions which could lead to the consideration of an agreement in the future.

**AGREEMENT FOR PROVIDING GAP FUNDING TO CABAZON WATER DISTRICT
RELATED TO APPROVED PROPOSITION 68 AND PROPOSITION 1 GRANTS**

This AGREEMENT FOR PROVIDING GAP FUNDING TO CABAZON WATER DISTRICT RELATED TO APPROVED PROPOSITION 68 AND PROPOSITION 1 GRANTS (“**Agreement**”) is made and entered into as of March ___, 2022, by and between the SAN GORGONIO PASS WATER AGENCY, a public agency formed under the San Gorgonio Pass Water Agency Law set forth in Act 1100 of the Water Code Uncodified Acts (“**SGPWA**”) and the CABAZON WATER DISTRICT, a public agency organized and operating under the County Water District Law, Water Code section 30000 *et seq.* (“**CABAZON**”). SGPWA and CABAZON are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. CABAZON and SGPWA are member agencies of the San Gorgonio Pass Groundwater Sustainability Agency (“**GSA**”)—the agency charged with managing groundwater resources in the San Gorgonio Pass Subbasin (“**Basin**”)—and are within the San Gorgonio Pass Integrated Regional Water Management Plan (“**IRWMP**”). The IRWMP provides a pathway for local agencies and stakeholders to collaboratively identify and implement water management solutions that provide multiple integrated benefits to stakeholders and communities within the IRWMP region.

B. SGPWA and CABAZON participated in the preparation of, and have each adopted the Basin Groundwater Sustainability Plan (“**GSP**”), which is administered by the GSA, and have participated in the development of the IRWMP, which is administered by the City of Banning (“**City**”).

C. CABAZON succeeded in securing two separate grants (collectively, the “**Grants**”) fully funding two projects it had submitted pursuant to the IRWMP: (i) a \$499,000 Proposition 68 grant agreement with the State Water Resources Control Board (“**State Board**”)

for groundwater well improvements (referred to in State Board's records as Agreement No. CWRCB0000000000D190203400), a copy of which is attached hereto as **Exhibit "A"**; and (ii) a \$1,228,985 Proposition 1 grant agreement with the California Department of Water Resources ("DWR") for the installation of 105 isolation valves (referred to in DWR's records as Agreement No. 4600013806), a copy of which is attached hereto as **Exhibit "B"**. The groundwater well improvement project and isolation valve improvement project (together, the "**Projects**") are ready to bid and must be completed within 12 months and 18 months, respectively, with possible extensions subject to approval by the grant-awarding agency.

D. The implementation of the Projects will help reduce water losses, which help meet the regional water management and Basin recharge objectives of the GSP and the IRWMP, and benefit the public by improving water supply in the Basin.

E. The DWR grant is distributed quarterly through the City as the disbursement administrator, and the State Board grant is disbursed quarterly to CABAZON, each in the form of reimbursement for eligible Projects costs. Disbursements under the Grant agreements involve lengthy warrant procedures, ranging from 90 to 180 days ("**Reimbursement Cycle**"), which necessitate that CABAZON advances its own funds to pay its contractors while awaiting reimbursement. As a small water system servicing disadvantaged communities, CABAZON would likely have difficulty advancing the necessary sums and may risk losing the Grants as contractors require a much shorter invoice payment turnaround time in order to undertake the Projects.

F. CABAZON estimates the need to advance up to \$800,000 per Reimbursement Cycle to cover Projects costs, and desires to enter into a gap funding agreement with SGPWA to avoid loss of the Grants and potential abandonment of the Projects.

G. SGPWA agrees to enter into a gap funding agreement with CABAZON because the Projects provide a benefit to the public by improving the Basin's water supplies and help meet the objectives of the GSP and the IRWMP in which SGPWA participates.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into the Agreement and made a part thereof by this reference.

2. **Purpose.** The Purpose of this Agreement is to establish: (i) the manner, terms and conditions pursuant to which SGPWA will advance certain funds to CABAZON; and (ii) the purposes for which CABAZON may use the funds so advanced.

3. **Effective Date.** The Effective Date of this Agreement shall be _____, 2022.

4. **Term of Agreement.** Unless otherwise extended or earlier terminated, the term of this Agreement shall commence on the Effective Date and shall end on the date that is the earlier to occur of: (i) the date that CABAZON repays the Advanced Funds (defined below) to SGPWA in full as required under this Agreement; and (ii) _____, 202__ (“**Term**”). This Agreement may be terminated by either Party upon a 90-days’ notice to the other Party, at which time all Advanced Funds received by CABAZON and not yet repaid to SGPWA shall become due and payable to SGPWA in accordance with Section 8 below.

5. **Maximum Advanced Funds.** The maximum amount that may be requested by CABAZON and advanced by SGPWA (“**Advanced Funds**”) during the Term of this Agreement shall not exceed **Eight Hundred Thousand Dollars (\$800,000.00)**. Once the maximum amount of Advanced Funds is reached, SGPWA shall have no obligation to advance any further funds to CABAZON.

6. **Payment Procedures to CABAZON.** CABAZON will submit to SGPWA a copy of the invoice or invoices, and accompanying backup documentation, that CABAZON has submitted or intends to submit to DWR or State Board, as the case may be, and for which CABAZON is requesting Advanced Funds from SGPWA (“**Invoices**”). Subject to availability of funds as determined in SGPWA’s reasonable discretion and the limitations set forth in Section 5 above, and provided CABAZON is not otherwise in breach of any term of this Agreement,

SGPWA will issue payment to CABAZON in the amounts so requested within 15 days of receiving the Invoices.

7. **Use of Advanced Funds.** CABAZON may use the Advanced Funds solely to pay Projects costs that are eligible for reimbursement under the terms of the Grant agreements referenced in Recital C, and for no other purpose.

8. **Repayment of Advanced Funds to SGPWA.** The Parties agree as follows:

a. CABAZON shall repay to SGPWA the Advanced Funds, in increments, within 15 days of CABAZON's receipt of Grant amounts from a Reimbursement Cycle or as other general funds become available, whichever occurs first, until the Advanced Funds are repaid to SGPWA in full; provided, however, that Advanced Funds not spent by CABAZON at the time the Projects are complete shall become immediately due and payable to SGPWA.

b. CABAZON's obligation to repay the Advanced Funds in full to SGPWA is not limited or extinguished by reason of the failure of DWR or State Board to distribute the Grants to CABAZON. If necessary, the Parties shall negotiate in good faith a reasonable repayment schedule pursuant to which CABAZON will repay to SGPWA the Advanced Funds for which CABAZON expected but did not receive Grant disbursements from DWR or State Board.

c. CABAZON's obligation to repay the Advanced Funds to SGPWA under this Agreement shall survive the expiration or earlier termination of this Agreement.

9. **Indemnification.** CABAZON shall indemnify and hold and save SGPWA, its officers, agents and employees free and harmless from any and all liabilities for any liens, claims and damages that may arise out of or in any way related to this Agreement and the Projects, including without limitation any liens, claims and damages (including attorneys' fees) arising from or in any way related to planning, design, construction, maintenance and operation of the Projects and any breach of this Agreement. The indemnification obligation under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. **No Partnership, Joint Venture or Agency Relation.** Nothing in this Agreement shall be construed to render SGPWA in any way or for any purpose a partner or joint venturer of CABAZON, nor shall this Agreement be construed to authorize either Party to act as agent for the other.

11. **Insurance.** CABAZON shall name SGPWA, SGPWA's officers, employees and agents as additional insureds on all insurance policies procured for the Projects.

12. **Entire Agreement; Amendment.** This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be modified or amended except in a writing signed by both Parties.

13. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

14. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at the address noted on the signature page, or such other address as a Party notifies the other in writing.

15. **Headings; Section References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

16. **Severability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the

extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

17. **Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. CABAZON shall not have the right to assign its rights under this Agreement except with the prior written consent of SGPWA, which consent may be withheld at SGPWA's sole discretion.

18. **Attorneys' Fees.** In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

19. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the county of Riverside, California, and consent to the jurisdiction thereof.

20. **Counterparts.** Counterpart execution of this Agreement is hereby authorized, including electronic transmission of pdf or similar format, and each counterpart of this Agreement so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

21. **Time of Essence.** Time is of the essence of each and every term, condition, obligation and provision hereof.

22. **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights or benefit upon, nor obligate any Party to any person or entity other than the Parties.

[Signatures follow on the next page]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

CABAZON:

SGPWA:

CABAZON WATER DISTRICT

SAN GORGONIO PASS WATER
AGENCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Fax: _____

Fax: _____

Phone: _____

Phone: _____

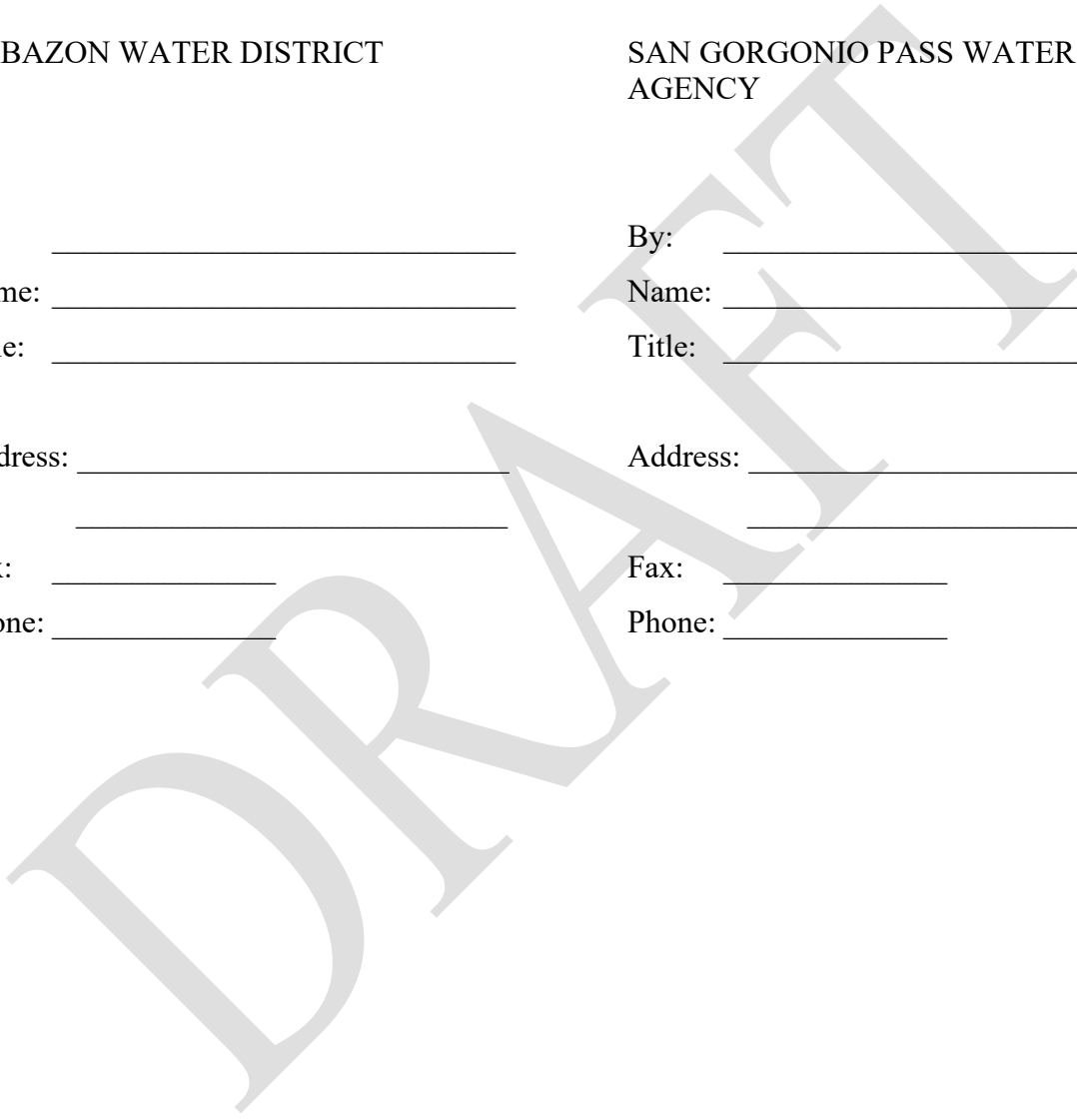


EXHIBIT "A"

STATE BOARD GRANT AGREEMENT

DRAFT

EXHIBIT "B"

DWR GRANT AGREEMENT

DRAFT

**AGREEMENT BETWEEN THE
THE CITY OF BANNING, CALIFORNIA
AND
CABAZON WATER DISTRICT**

**FOR FUNDS FROM A PROPOSITION 1 ROUND 1 INTEGRATED REGIONAL
WATER MANAGEMENT (IRWM) GRANT TO THE SAN GORGONIO REGION TO
COMPLETE**

PROJECT 2: ISOLATION VALVE IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this ____ day of _____, by and between the Cabazon Water District, hereinafter called "Subgrantee" or "Local Project Sponsor," and the City of Banning, hereinafter called "THE CITY or "Grantee" for the purposes of completing PROJECT 2: ISOLATION VALVE IMPROVEMENT PROJECT, hereinafter called "Project," and receiving reimbursement from the State Grant for a portion of Project expenses.

RECITALS

A. The City of Banning, California hereinafter called "THE CITY" or "Grantee" has agreed to enter into Agreement Number 4600013806, hereinafter called State Grant Agreement, with the Department of Water Resources of the State of California, hereinafter called "DWR" or "State," pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.). The State funding will assist in financing the projects identified in the Grant Agreement associated with the adopted Integrated Regional Water Management (IRWM) Plan for the San Gorgonio Region. The State Grant Agreement (**Exhibit F**), and any subsequent amendments thereto, are incorporated herein by reference.

B. The term Local Project Sponsor (LPS) refers to the implementing agency intended to receive grant funding pursuant to said State Grant Agreement for work to be completed by LPS as set forth in said State Grant Agreement. LPS shall be assigned in accordance with the participating agencies identified in the State Grant Agreement. All work to be completed by LPS is referred to in this Agreement as "Project" and is defined as a group of activities as set forth in the State Grant Agreement **Exhibit A** (Work Plan); however, an individual LPS that enters into a Subgrantee Agreement with THE CITY for grant funds is responsible only for its portion of activities and not for activities proposed by any other LPS.

C. The parties acknowledge that THE CITY will administer the distribution of grant funds to each LPS pursuant to the State Grant Agreement. The LPS agrees to act on behalf of THE CITY for the purposes of its individual Project management, oversight, compliance, and operations and maintenance. LPS is responsible for all other aspects of its Project in a manner to ensure THE

CITY's compliance with the State Grant Agreement. LPS is solely responsible for design, construction, and operation and maintenance of the project it has proposed in State Grant Agreement, **Exhibit A**, Work Plan. Review or approval of plans, specifications, bid documents, or other construction documents by THE CITY or the State is solely for the purpose of proper administration of funds by THE CITY or the State and shall not be deemed to relieve or restrict responsibilities of the LPS under this Agreement.

D. The term of this Agreement begins on the date this Agreement is fully executed by both THE CITY and the Local Project Sponsor and ends on the termination date specified in the State Grant Agreement.

E. The parties desire to set forth the terms and conditions under which the Local Project Sponsor is to receive grant funds from THE CITY.

SECTION I SCOPE OF SERVICES

THE CITY hereby engages Subgrantee to complete the Project as forth in **Exhibit A**, Project Scope of Work, hereinafter referred to as **Exhibit A**, Work Plan, which is an integral part of the State Grant Agreement between the State of California Department of Water Resources and THE CITY of Banning, Agreement Number 4600013806, pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.), hereinafter referred to as State Grant Agreement and incorporated as **Exhibit F** to this Agreement.

SECTION II COMPENSATION

A. GRANT REIMBURSEMENT SCHEDULE

Grant reimbursements payable to Subgrantee for services specified herein shall be in accordance with **Exhibit B**, Budget as shown in the State Grant Agreement. The cost of the Project is estimated to be \$1,243,035. Subgrantee agrees to be responsible for the Other Cost Share of the Project as shown in **Exhibit B**, Budget (\$14,050). Costs incurred after June 03, 2020 will be eligible for grant reimbursement and costs incurred after January 1, 2015 can be used as required local cost share. However, Grantee received 100% local cost share waiver.

B. METHOD OF PAYMENT

Reimbursement of funds expended by Subgrantee shall be based on work described in **Exhibit A**, Work Plan. In order to receive disbursement of grant funds, Local Project Sponsor shall submit to THE CITY quarterly invoices for eligible project costs as defined in the State Grant Agreement Item 7 (Eligible Project Cost) in a form required by THE CITY. Supporting documentation as

described in the State Grant Agreement Item 8 (Method of Payment) shall accompany each invoice. The documentation required by this paragraph shall be sent to:

Jennifer Jackson, Grants Coordinator
City of Banning
jjackson@banningca.gov

THE CITY shall request reimbursement from the State for Subgrantee's costs, subject to a finding by THE CITY that the invoice and supporting documentation are consistent with the requirements of **Exhibit F**, State Grant Agreement. Where THE CITY finds the invoice and supporting documentation for work to be unsatisfactory, THE CITY shall describe deficiencies in writing or by electronic mail (e-mail) to Subgrantee within ten (10) days. Subgrantee shall have the option of revising the invoice and supporting documentation to delete reimbursement requests for invoices that are deemed unsatisfactory or revising unsatisfactory invoices and resubmitting a reimbursement request. Payments to Subgrantee are due and payable within thirty (30) days after receipt of grant funds from the State. As specified in State Grant Agreement, Exhibit D.36, ten percent (10%) of the maximum payment shall be retained by State, until such time as State releases the retention to THE CITY. The final invoice for work performed shall be submitted by Subgrantee to THE CITY not later than 30 days after completion of Project work as set forth in **Exhibit C**, Schedule. THE CITY shall submit such invoice to State with request for release of retention(s) not later than 60 days after receipt of invoice.

C. MAXIMUM PAYMENT

Payments to Subgrantee for Project expenses incurred under this Agreement **shall not exceed \$1,228,985.**

SECTION III INSPECTION OF WORK

Authorized representatives of THE CITY shall have access to Subgrantee's offices or other work location during normal business hours for the purpose of review and inspection of work activities undertaken pursuant to this Agreement.

SECTION IV OWNERSHIP OF PROJECT REPORT

For the purposes of retaining records for any future audits, Subgrantee shall provide THE CITY electronic copies of all original documents, explanations of methods, maps, tables, computer programs, reports and other documents prepared under this Agreement and described as deliverables in **Exhibit F**, State Grant Agreement. Subgrantee may be required to provide

additional documents to the State. THE CITY shall forward to the State all such requested documents.

SECTION V TIME OF PERFORMANCE

Subgrantee shall begin work upon the effective date of the DWR Grant Agreement and shall complete all tasks described herein according to the schedule shown in **Exhibit C**, Schedule. Time is of the essence to the Agreement, and late performance may result in a termination of the Agreement pursuant to Section IX, Termination.

SECTION VI RESPONSIBILITIES

A. Subgrantee agrees to secure at Subgrantee's own expense all personnel, materials, and related services required to perform the services under this Agreement. Subgrantee shall act as an independent contractor and not as an agent or employee of THE CITY. Subgrantee shall have exclusive and complete control over Subgrantee's employees and subcontractors and shall determine the method of performing the services hereunder.

B. THE CITY shall provide Subgrantee with all data and documents in its possession related to the State Grant as requested.

C. Subgrantee shall perform the work and provide the documentation required of THE CITY or pertinent to Local Project Sponsor's Project in a timely manner as set forth, without limitation, in **Exhibit A**, Work Plan. Notwithstanding the foregoing, any documents or information required to be submitted to the State, Department of Water Resources, agents of the Department of Water Resources, agents of the State, shall be submitted by Subgrantee to THE CITY for submittal by THE CITY to the appropriate party designated in the State Grant Agreement.

D. Subgrantee agrees to provide all required reports as specified in State Grant Agreement Item 14 (Submission of Reports), **Exhibit F**, according to a format and schedule as specified by THE CITY. This pertains to the quarterly Progress Report, Final Report, and Post-Performance Reports.

E. Subgrantee shall coordinate and arrange for all meetings required to be held with other agencies or persons hereunder for the Project work specified in **Exhibit A**, Work Plan. Subgrantee shall be responsible for the reproduction of work produced by Subgrantee hereunder.

F. THE CITY is to provide administrative services for the benefit of Local Project Sponsor and other local project sponsors, in the administration of this Agreement and the State Grant Agreement. THE CITY is to receive compensation via grant reimbursement for these services as set forth in the State Grant Agreement Exhibits A and B (Work Plan and Budget).

G. THE CITY agrees to provide grant administrative services for the term specified in the State Grant Agreement. In the event the terms or conditions of the State Grant Agreement are changed to accommodate the Local Project Sponsor, THE CITY shall be reimbursed by the Subgrantee for any additional administrative costs that are solely attributable to grant administration occurring beyond the original scope of work described in the State Grant Agreement.

H. Subgrantee acknowledges that State Grant Agreement Item 5 (Basic Conditions) establishes the State shall have no obligation to disburse money for the Project under this Agreement until THE CITY, and as applicable the Subgrantee, has satisfied all the applicable conditions specified in Item 5.

I. Subgrantee acknowledges its responsibility to comply with the applicable provisions of the State Grant Agreement Exhibit D. Standard Conditions. Special attention is directed to State Grant Agreement Section D5 "Audits." Subgrantee may be required to share in expenses associated with an audit and shall be required to maintain records for at least three (3) years after Project completion.

J. The Subgrantee agrees to indemnify, defend and save harmless THE CITY, its officers, agents and employees, from any and all claims and losses accruing or resulting to any and all subcontractors, material suppliers, laborers and any other person, firm or corporation who may be injured or damaged by the negligent acts, errors, and/or omissions of the Subgrantee, Subgrantee's employees, or Subgrantee's subcontractors or sub-subcontractors in the performance of this Agreement.

K. Subgrantee agrees to perform all work for the Project under this Agreement in compliance with the terms and conditions of **Exhibit F**, State Grant Agreement.

SECTION VII INSURANCE

The Subgrantee shall procure, purchase at its expense and maintain in full force and effect such insurance as will protect it from claims, damages, losses, liability, costs, and expenses as set forth herein which may arise out of or result from or in any way connected with the Subgrantee's activities, work, services, and/or operations performed by the Subgrantee under this Agreement, whether such activities or operations be by itself or by any subcontractor or by any sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone else for whose acts the Subgrantee or any of them is or may be liable. The procurement and maintenance by the Subgrantee of policies required under this Agreement shall not relieve, limit or satisfy Subgrantee's obligation to indemnify, defend and save harmless THE CITY, its officers, directors, agents and employees pursuant to Section VIII of this Agreement.

A. Subgrantee represents that Subgrantee will, prior to commencement of work pursuant to this agreement, name and endorse on to his Comprehensive General Liability insurance policy THE CITY and the State, its officers, agents and employees as "an insured" with respect to liability

arising out of the activities, services, operations or work performed by Subgrantee for THE CITY (ISO form CG 20 09 11 85 or its equivalence). Subgrantee shall obtain and keep in full force and effect insurance policies and in appropriate limits as specified by the Insurance Requirements (**Exhibit D**) and shall require any subcontractor or sub-subcontractor to provide evidence of similar liability insurance coverages.

B. Subgrantee shall add to Subgrantee's Comprehensive General Liability insurance policy a severability interest clause or such similar wording if Subgrantee's policy does not automatically have this clause already written into it. Such language shall be similar to: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, including claims made or suits brought by any person included within the persons insured provision of this insurance against any other such person or organization."

C. All policies carried by Subgrantee shall contain a provision or be endorsed to state that coverage as respects to THE CITY and the State, its officers, agents and employees shall not be suspended, voided, canceled or non-renewed except after the insurance company has given to THE CITY at least forty-five (45) days prior written notice to the address shown below prior to any such termination of coverage becomes effective.

D. Subgrantee shall, on all policies or coverages required to be carried by Subgrantee pursuant to this Agreement, give THE CITY forty-five (45) days prior written notice by certified mail, return receipt requested, to the address shown below notification of any limitations, reductions or material change in coverage or in limits available.

E. Prior to the execution of the Agreement, Subgrantee shall file with THE CITY certificates of insurance coverage actually in force required to be carried by Subgrantee pursuant to this Section VII and Insurance Requirements (**Exhibit D**). With respect to each renewal or replacement of any such insurance, the requirements of this paragraph must be complied with not less than forty-five (45) days prior to the expiration or cancellation of the policy being renewed or replaced.

F. All insurance policies carried by or available to Subgrantee shall be primary and not excess nor contributing with any insurance issued to or available to THE CITY. Any insurance or self-insurance maintained or carried by THE CITY shall be excess of the Subgrantee's insurance and shall not participate in nor contribute with such insurance carried by or available to Subgrantee. THE CITY will not be responsible for any payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements. The cost of such insurance shall be borne solely by the Subgrantee.

G. In the event Subgrantee elects to utilize existing policies to meet insurance requirements specified herein for comprehensive general liability and or professional errors and omissions coverages, Subgrantee shall provide an accurate history of claims filed against either of those policies during the past twenty-four (24) months along with amounts paid and reserves outstanding.

H. THE CITY shall be under no duty either to ascertain the existence of or to examine such insurance policies or to advise Subgrantee in the event such insurance coverage does not comply

with the requirements hereof. However, THE CITY may, at any time, and from time to time, inspect and copy any and all insurance policies, endorsements, certificates and correspondence required to be carried by Subgrantee pursuant to this Agreement.

SECTION VIII INDEMNIFICATION

Subgrantee shall indemnify and hold and save THE CITY, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of this Project and any breach of this Agreement.

SECTION IX CHANGES AND CHANGED CONDITIONS

If, during the course of the work herein contemplated, the need to change the Project Work Plan or the time schedule should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing. The representatives of the parties shall meet within seven (7) working days of the date of such notice, to discuss the need for change so identified and to set the proposed action to be taken by the parties. A change in the Project Work Plan may also result in a change in the compensation amount. Compensation changes shall be based upon the Project Budget (Exhibit B) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement and to Exhibit F, State Grant Agreement.

SECTION X TERMINATION

THE CITY may terminate this Agreement by written notice to Subgrantee at any time prior to completion of work described in Exhibit A, Work Plan, at the option of THE CITY, upon violation by the Subgrantee of any material provision after such violation has been called to the attention of the Subgrantee and after failure by the Subgrantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by THE CITY. In the event of such termination, the Subgrantee agrees, upon demand, to immediately repay to THE CITY an amount equal to the amount of grant funds disbursed to the Subgrantee prior to such termination, if such a demand is made by the State. 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 Subgrantee to the date of full repayment by the Subgrantee. In addition, Subgrantee agrees to pay all costs incurred by THE CITY to recover such funds.

SECTION XI

SUB-CONTRACTING

Subgrantee agrees that all provisions in the State Grant Agreement applying to Subgrantee shall also apply to its sub-contractors.

SECTION XII NONDISCRIMINATION AND FAIR EMPLOYMENT

During the performance of this Agreement, the Subgrantee and its contractors shall comply with the requirements in State Grant Agreement, **Exhibit F**.

SECTION XIII DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: Subgrantee, its contractors or subcontractors shall certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace. Prior to commencement of work pursuant to this agreement, the Subgrantee, and all sub-subgrantees and subcontractors performing any portion of the work, shall complete and submit to THE CITY a Drug-Free Workplace Certification (**Exhibit E**).

SECTION XIV INTEREST OF SUBGRANTEE

During the performance of this Agreement, the Subgrantee and its contractors shall comply with the requirements in State Grant Agreement, **Exhibit F**.

SECTION XV CONTINGENT FEES

Subgrantee warrants that Subgrantee has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee to solicit or secure this Agreement, and that Subgrantee has not paid or agreed to pay any company, or person, other than a bona fide employee working solely for Subgrantee, any fee, commission, percentage, brokerage fee, gifts, or other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, THE CITY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, gift or contingent fee.

SECTION XVI

DISPUTES

In the event of a dispute arising out of the performance of this Agreement either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within five (5) working days of receipt of such a statement of conflict, the second party will respond and a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) working days from the initial filing of a statement of conflict an agreement cannot be reached, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law and it is agreed that venue shall be in the County of Riverside. The prevailing party shall be awarded costs of suit, and attorneys' fees.

SECTION XVII NOTICES

All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address, as follows:

GRANTEE:	City of Banning 99 E. Ramsey St. P.O. Box 998 Banning, CA 92220-0998
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SUBGRANTEE:	Cabazon Water District 14618 Broadway Street P.O. Box 297 Cabazon, CA 92230
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SECTION XVIII AMENDMENTS

This Agreement together with **Exhibits A through F** sets forth the entire understanding of the parties with respect to the subject matter herein. There are no other agreements expressed or implied, oral or written, except as set forth herein. This Agreement may not be amended except upon written amendment, executed by both parties hereto.

SECTION XIX ATTACHMENTS

The following exhibits attached hereto and referred to in the preceding sections are, by reference, incorporated herein and made an integral part of this Agreement:

- Exhibit A.** Work Plan
- Exhibit B.** Project Schedule
- Exhibit C.** Project Budget
- Exhibit D.** Insurance Requirements
- Exhibit E.** Drug-Free Workplace Policy and Certification
- Exhibit F.** Grant Agreement between the State of California Department of Water Resources and the City of Banning, Agreement Number 4600013806, Proposition 1 Round 1 Integrated Regional Water Management (IRWM) Implementation Grant

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

CITY OF BANNING

SIGNED: _____
BY: ART VELA, PE
TITLE: PUBLIC WORKS DIRECTOR/CITY ENGINEER

CABAZON WATER DISTRICT

SIGNED: _____
BY: _____
TITLE: _____
FEDERAL TAX ID: _____

EXHIBIT A – WORK PLAN

See Exhibit A to State Grant Agreement No. 4600013806

PROJECT 2: ISOLATION VALVE IMPROVEMENT PROJECT

PROJECT 2: Isolation Valve Improvement Project**IMPLEMENTING AGENCY: Cabazon Water District****PROJECT DESCRIPTION:**

The project will consist of furnishing and installing approximately 105 new isolation valves in the Cabazon Water District's water system to provide additional operational flexibility in the system and reduce the number of customers adversely affected by system outages. The increased quantity of isolation valves will drastically reduce the amount of water lost during pipeline dewatering and limit the number of customers affected by these outages. The reduction in energy usage will reduce carbon emissions by approximately 13.4 megatonnes (MT) per year.

Budget Category (a): Project AdministrationTask 1: Project Management

Manage grant agreement including compliance with grant requirements, and preparation and submission of supporting grant documents and coordination with IRWM regional manager and the Grantee. Prepare invoices including relevant supporting documentation for submittal to DWR via the Grantee. This task also includes administrative responsibilities associated with the project such as coordinating with partnering agencies and managing consultants/contractors.

Deliverables:

- Invoices and associated backup documentation

Task 2: Reporting

Prepare progress reports detailing work completed during reporting period as outlined in Exhibit F of this Agreement for submittal to DWR.

Prepare draft Project Completion Report and submit to DWR no later than 90 days after project completion for DWR Project Manager's comment and review. The report shall be prepared and presented in accordance with guidance as outlined in Exhibit F.

Deliverables:

- Quarterly Project Progress Reports
- Project Completion Report
- Documentation (e.g., photo) of "Acknowledgment of Credit & Signage" per Standard Condition D.2

Budget Category (b): Land Purchase/EasementTask 3: Land Purchase

Not applicable.

Budget Category (c): Planning/Design/Engineering/Environmental DocumentationTask 4: CEQA Documentation

A Notice of Exemption was filed with Riverside County in 2019 for this project. Prepare letter stating no legal challenges (or addressing legal challenges).

Deliverables:

- Completed CEQA documents as required

- Legal Challenges Letter

Task 5: Permitting

The project is located within existing paved road rights-of-way throughout the Cabazon Water District's service area, in the Community of Cabazon. Once the work is awarded to a Contractor, the Contractor will secure an encroachment permit from Riverside County to perform work within Riverside County's rights-of-way.

No other permits are required for project construction or implementation.

Deliverables:

- Permits as required

Task 6: Design

This task includes the development of draft designs (30%, 60%, 90% design) which identify the approximate locations of all new valves. The project will be designed to maximize operational flexibility and minimize the number of people or length of time affected by outages, as well as access for construction. Afterwards, 100% design drawings would then be finalized. All designs will comply with applicable construction and health and safety standards, such as American Water Works Association standards for valves.

Deliverables:

- 100% Design Plans and Specifications

Task 7: Project Monitoring Plan

Develop and submit a Project Monitoring Plan per Paragraph 16 (guidance provided in Exhibit J) for DWR's review and approval.

Deliverables:

- Project Monitoring Plan

Budget Category (d): Construction/Implementation

Task 8: Contract Services

This task must comply with the Standard Condition D.11 – Competitive Bidding and Procurements. Activities necessary (as applicable) to secure a contractor and award the contract, including: develop bid documents, prepare advertisement and contract documents for construction contract bidding, conduct pre-bid meeting, bid opening and evaluation, selection of the contractor, award of contract, and issuance of notice to proceed.

Deliverables:

- Bid Documents
- Proof of Advertisement
- Award of Contract
- Notice to Proceed

Task 9: Construction Administration

This task includes managing contractor submittal review, answering requests for information, and issuing work directives. A full-time engineering construction observer will be on site for the duration of the project. Construction observer duties include: documenting of pre-construction conditions, updating daily construction

diary, preparing change orders, addressing questions of contractors on site, reviewing/ updating project schedule, reviewing contractor log submittals and pay requests, forecasting cash flow, and notifying contractor if work is not acceptable. After the project is complete, the Contract Administrator will provide a notice of completion to the Cabazon Water District. Upon completion of the project, the DWR Certificate of Project Completion and record drawings will be provided to DWR.

Deliverables:

- DWR Certificate of Project Completion
- Record Drawings

Task 10: Construction

Construction will include excavation, valve installation, pipeline restraint (as required by addition of isolation valves), backfill and compaction, trench shoring, traffic control, and pavement replacement. Valve testing (to ensure valves are fully operational in the open and closed positions) will begin as sections of the system are completed.

Construction activities are outlined below.

10(a): Mobilization and Demobilization: Because valves will be installed throughout the Cabazon Water District's network, mobilization and demobilization will occur in different areas across the system at different times. Mobilization and demobilization include moving equipment to and from the site and set up and breakdown of equipment following valve installation and testing. Final demobilization at the site will be completed to remove equipment.

10(b): Site preparation: To prepare sites for construction, the Contractor will identify underground utilities to avoid, traffic control activities (as necessary), and any other activities required for the safe and clear access to the valve location.

10(c): Install, construct, excavate: Once mobilization and site preparation are complete for a given area, the Contractor will install valves in that area. This includes excavation for safe access to the valve locations and installation of the new valve. Approximately 36 six-inch, 48 eight-inch, and 12 ten-inch gate valves; and 5 twelve-inch and 4 sixteen-inch butterfly valves will be installed, for a total of 105 valves. Installation of the valves will require trench excavation and shoring; bedding, backfill, and compaction; pavement replacement; valve cans and valve collars; and testing of the new valves. Following installation of valves, the Contractor will restore the disturbed area to pre-construction conditions. This includes backfilling valve trenches and trench pavement repair (and striping, if required) to restore sites to pre-construction conditions.

Deliverables:

- Photographic Documentation of Progress
- System Performance Test Results

EXHIBIT B – BUDGET

See Exhibit B to State Grant Agreement No. 4600013806

PROJECT 2: ISOLATION VALVE IMPROVEMENT PROJECT

PROJECT 2: Isolation Valve Improvement Project

Implementing Agency: Cabazon Water District

Project directly serves a need of a Disadvantaged Community: **Yes**

BUDGET CATEGORY		Grant Amount	Required Cost Share: Non-State Fund Source*	Other Cost Share**	Total Cost
a	Project Administration	\$34,307	\$0	\$0	\$34,307
b	Land Purchase / Easement	\$0	\$0	\$0	\$0
c	Planning / Design / Engineering / Environmental Documentation	\$52,458	\$0	\$14,050	\$66,508
d	Construction / Implementation	\$1,142,220	\$0	\$0	\$1,142,220
TOTAL COSTS		\$1,228,985	\$0	\$14,050	\$1,243,035

NOTES: Eligible costs for each Budget Category will only be approved for reimbursement and Cost Share for the work completed within the date ranges listed in Exhibit C.

*Grantee received 100% cost share waiver.

**Other Cost Share will be paid by Cabazon Water District general funds

EXHIBIT C – SCHEDULE

See Exhibit C to State Grant Agreement No. 4600013806

PROJECT 2: ISOLATION VALVE IMPROVEMENT PROJECT

EXHIBIT C
SCHEDULE**PROPOSITION 1 ROUND 1 SAN GORGONIO IRWM IMPLEMENTATION GRANT****Grant Administration**

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/01/2020	12/31/2022

PROJECT 1: Altitude Valves Installation Project

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/07/2020	09/30/2022
b	Land Purchase / Easement	N/A	N/A
c	Planning / Design / Engineering / Environmental Documentation	09/10/2018	10/30/2020
d	Construction / Implementation	11/01/2020	06/30/2022

PROJECT 2: Isolation Valve Improvement Project

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/07/2020	2/28/2022
b	Land Purchase / Easement	N/A	N/A
c	Planning / Design / Engineering / Environmental Documentation	11/01/2018	06/18/2021
d	Construction / Implementation*	03/22/2021	11/30/2021

*Category d and Category c overlap due to encroachment permits that must be acquired by the contractor.

EXHIBIT D -- INSURANCE REQUIREMENTS

I. Minimum Scope and Limits of Insurance

Subgrantee shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

A. Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location.

B. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. If Subgrantee does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Subgrantee shall obtain a non-owned auto endorsement to the Commercial General Liability policy.

C. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Subgrantee has no employees while performing Services under this Agreement, workers' compensation policy is not required; however, Subgrantee shall execute a declaration that it has no employees.

D. Professional Liability/Errors and Omissions Insurance with minimum limits of \$1,000,000.00 per claim and in the aggregate.

II. Acceptability of Insurers.

The insurance policies required under this Article shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Article.

III. Additional Insured.

The commercial general and automobile liability policies shall contain an endorsement naming THE CITY, its officers, employees, agents and volunteers as additional insureds.

IV. Primary and Non-Contributing.

The insurance policies required under this Article shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to THE CITY. Any insurance or self-insurance maintained by THE CITY, its officers, employees, agents or volunteers, shall be in excess of Subgrantee's insurance and shall not contribute with it.

V. Subgrantee's Waiver of Subrogation.

The insurance policies required under this Article shall not prohibit Subgrantee and Subgrantee's employees, agents or sub-contractors from waiving the right of subrogation prior to a loss. Subgrantee hereby waives all rights of subrogation against THE CITY.

VI. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by THE CITY. At THE CITY's option, Subgrantee shall either reduce or eliminate the deductibles or self-insured retentions with respect to THE CITY; or Subgrantee shall procure a bond guaranteeing payment of losses and expenses.

VII. Cancellations or Modifications to Coverage.

Subgrantee shall not cancel, reduce or otherwise modify the insurance policies required by this Article during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to THE CITY. If any insurance policy required under this Article is canceled or reduced in coverage or limits, Subgrantee shall, within two (2) Business Days of notice from the insurer, phone, fax or notify THE CITY via certified mail, return receipt requested, of the cancellation of or changes to the policy.

EXHIBIT E -- DRUG-FREE WORKPLACE POLICY CERTIFICATION

CITY OF BANNING

ADMINISTRATIVE POLICY

Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 47 Of 47

I agree to notify my department head/manager before beginning work when using, before or during work, drugs, medications, or any other substance which I believe could foreseeably interfere with my effective job performance or operation of a City vehicle or equipment.

Date: _____

Employee (signature)

Employee Name (printed)

RESOLUTION NO. 2003-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE DRUG FREE WORKPLACE POLICY, AS AMENDED, EFFECTIVE JUNE 2003.

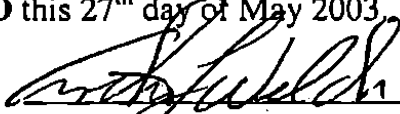
WHEREAS, a number of federal and state rules and regulations require that the City establish a drug free workplace policy, including establishment of drug testing procedures for its transit and paratransit systems and vehicles subject to the U.S. Department of Transportation and the Federal Motor Carriers Safety Act;

WHEREAS, in August 2001, the Federal Transit Administration promulgated significant revisions to the Code of Federal Regulations governing the testing methods set forth in 49 CFR Part 40, which the City was required to incorporate into its policy; and

WHEREAS, 49 CFR Part 655 mandates that the required policy be formally approved by the governing body of the agency engaged in the transit and safety-sensitive functions defined therein;

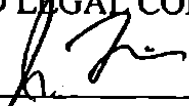
NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning adopts the Drug Free Workplace Policy, As Amended, Effective June 2003.

PASSED, APPROVED, AND ADOPTED this 27th day of May 2003




Arthur L. Welch, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT



John F. Wilson
City Attorney

ATTEST



Marie A Calderon, City Clerk
City of Banning

CERTIFICATION

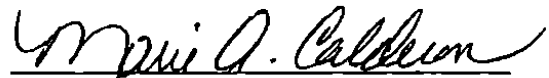
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2003-41 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 27th day of May, 2003 by the following vote, to wit:

AYES: Councilmembers Hanna, Machisic, Palmer, Salas, Mayor Welch

NOES: None

ABSTAIN: None

ABSENT: None



Marie A. Calderon, City Clerk
City of Banning, California

CITY OF BANNING		
ADMINISTRATIVE POLICY		
Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No.

**DRUG FREE WORKPLACE POLICY
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CITY OF BANNING

ADMINISTRATIVE POLICY

Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No.

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CITY OF BANNING		
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CITY OF BANNING		
ADMINISTRATIVE POLICY		
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CITY OF BANNING		
ADMINISTRATIVE POLICY		
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I. PURPOSE

The City of Banning (the "City") is committed to providing its employees and the public with an environment that is free of the effects of the use of illegal drugs and the misuse of alcohol.

The goal is furthered by the adoption of this policy. This policy is intended to encourage behavior that ensures that the city workplace is free from the effects of on-duty and off-duty use of illegal drugs and misuse of alcohol. This same policy is intended to obtain a change in any employee behavior that is inconsistent with the goal of a drug-free and alcohol-free workplace.

This policy also includes regulations that are mandated under federal law to insure the safe operation by the City of its transit and paratransit systems and vehicles subject to U.S. Department of Transportation regulations. This policy sets forth guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1990, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration ("FTA") of the U.S. Department of Transportation has published 49 CFR Part 655, as amended. Those regulations mandate urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibit performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation ("USDOT") has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

This policy also includes guidelines to maintain a drug and alcohol-free workplace independent of the federal requirements described above.

THIS POLICY DOES NOT APPLY TO THE SWORN PERSONNEL OF THE CITY.

CITY OF BANNING		
ADMINISTRATIVE POLICY		
Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 2 Of 47

II. DECLARATION OF A DRUG FREE WORKPLACE

The City of Banning hereby declares that the unlawful purchase, manufacture, distribution, dispensing, possession, or use of controlled substances or misuse of alcohol in violation of these guidelines by an Employee constitutes immoral or unprofessional conduct, dishonesty, incompetence, and evident unfitness for service, for any involved employee and shall constitute grounds for disciplinary action to and including termination from service.

III. APPLICABILITY

Except as otherwise specifically indicated, the policies and procedures set forth herein shall be applicable to all employees of the City of Banning. Where specifically set forth, certain of the rules in this policy are solely applicable to employees in "Safety-Sensitive" positions, DOT Drivers and Covered Employees as defined in this Policy and listed in Exhibit A.

IV. DEFINITIONS

Accident

- A. Shall have its commonly accepted meaning when applied to non-safety sensitive positions and safety sensitive positions that are not DOT Drivers. An Employee shall be subject to the alcohol and drug testing requirements of this policy only under the circumstances where if, as a result of the Accident:
- (1) An individual, ("individual" includes the Employee or any other individual) dies;
 - (2) An individual suffers a bodily injury and immediately receives medical treatment for the injury; or
 - (3) One or more vehicles or pieces of equipment with a value of \$3,500 or more incur disabling damage as the result of the occurrence,

CITY OF BANNING		
ADMINISTRATIVE POLICY		
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including the personal vehicle of an Employee when driven in the scope of employment.

B. In addition, and not in limitation, as to DOT Drivers, Covered Employees and Employees performing Safety Sensitive Functions, Accident shall mean an occurrence involving the operation of a revenue service vehicle even when not in revenue service, and/ or which involves the operation of a vehicle that requires a Commercial Driver's License to operate, if as a result:

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or
- (3) One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle.

Adulterated specimen means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Test means the compulsory production and submission of breath by an employee in accordance with the provisions of this Policy for analysis to detect prohibited alcohol use.

Alcohol Concentration is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

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Applicant means any person applying for employment with the City of Banning.

Canceled Test is a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

Confirmatory Test is a second drug or alcohol test administered to verify the results of a first drug or alcohol test.

Controlled Substance. Any drugs that are classified by the Drug Enforcement Administration (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted use, and accepted safety under medical supervision. (See also **Prohibited Drug/Substance** and **Illegal Drugs**). The presence of a drug on any of these schedules establishes that it is "controlled" and also defines the nature of the supervisory control that must be exercised.

Covered Employee means an employee who is a DOT Driver, or is performing a Safety-sensitive Function. (see Attachment "A").

Department Head means an employee of the City who is responsible for the operations of a subdivision of the City work force and whose job description substantially states that they work under the direct guidance and direction of the City Manager, and who is not otherwise named a Manager in their job title.

Designated Employer Representative ("DER") An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing.

Dilute specimen means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after

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simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

DOT (Department of Transportation) Driver means any employee who is required under state law to obtain a commercial driver's license and who as part of their duties drives, or can be called upon at any time to drive, one of the following vehicles:

- A. One having a Gross Vehicle Weight Rating (GVWR) as assigned by the manufacturer of 26,001 pounds or more; or
- B. One having a Gross Combination Weight Rating (GVWR) of 26,001 pounds or more, inclusive of a towed vehicle having a weight rating in excess of 10,000 pounds; or
- C. One designed to carry 16 or more passengers including the driver; or
- D. One, regardless of size, that transports hazardous materials in a quantity requiring that vehicle to be placarded.

Drug Test means the compulsory production and submission of urine by an Employee in accordance with the provisions of this policy for chemical analysis to detect prohibited drug use.

Drug & Alcohol Program Manager An employee authorized by the Employer to receive test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

Drug Use means the use of a legal drug, illegal drug or controlled substance.

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Employee means any person hired in a regular, temporary, part-time, seasonal, or probationary capacity to perform a service for the City. Includes Covered Employees, DOT Drivers, safety-sensitive functions and all other employees.

Illegal Drugs means drugs or controlled substances as specified in the California Uniform Controlled Substance Act (Division 10, of the California Health & Safety Code) which are not legally obtained. Examples include, but are not limited to, cocaine, marijuana, heroin, and PCP. Whenever used in this policy this term shall also include Controlled Substance and Prohibited Drug/Substance.

Impaired means subject to Reasonable Suspicion, as defined in these definitions.

Job Function means any and all duties of an employee, including any safety-sensitive functions.

Legal Drugs means physician prescribed controlled substances or over-the-counter drugs that are legally obtained and used for the specific purpose and in the manner for which they were prescribed.

Licensed Medical Personnel means persons certified by the appropriate licensing authority to perform the procedures set forth in this policy for the detection of illegal drugs or misuse of alcohol

Manager means the person occupying any position named as Director or Manager in the job title. Manager shall include sworn personnel in their function as a Manager of non-sworn personnel. Such sworn personnel are not themselves subject to testing under this policy.

Medical Review Officer ("MRO") means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results

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generated by the drug testing program who has knowledge of substance of abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative test result for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative test result is a test result found to be adulterated, substitute, invalid, or positive for drug/drug metabolites. Non-negative results are considered a positive test or refusal to test if the MRO cannot determine legitimate medical explanation.

Positive Test Result for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

Prohibited Drug/Substance means marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds as specified in 49 CFR Part 40, as amended. Also includes "Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1990" any drug or substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of

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hemp related products, as which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

FEDERAL TRANSIT ADMINISTRATION DRUG TESTING REGULATIONS (49 CFR PART 655) REQUIRE THAT ALL COVERED EMPLOYEES BE TESTED FOR MARIJUANA, COCAINE, AMPHETAMINES, OPIATES, AND PHENCYCLIDINE AS DESCRIBED IN ATTACHMENT "B" OF THIS POLICY. ILLEGAL USE OF THESE FIVE DRUGS IS PROHIBITED AT ALL TIMES AND COVERED EMPLOYEES MAY BE TESTED FOR THESE DRUGS ANYTIME THAT THEY ARE ON DUTY.

Reasonable Suspicion means a belief, based on objective and articulable facts, that there are reasons to believe that drug or alcohol use is impacting job performance and safety. Reasonable Suspicion requires objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. As an example and not by way of exclusion of other, any of the following, alone or in combination, may constitute reasonable suspicion that an employee may have a prohibited presence of controlled substances or alcohol in his or her system:

- A. Slurred speech
- B. Alcohol odor on breath
- C. Unsteady walking or movement
- D. Physical impairment (i.e., eye dilation, shivering or erratic movement)
- E. An accident involving City property, City equipment and/or City employees
- F. Physical altercation
- G. Verbal altercation
- H. Possession of drugs or alcohol
- I. Information from a reliable person with personal knowledge of facts that place the Employee in violation of this policy. For purposes of this subsection a reliable person is one who is known to be, or reasonably believed to be trained to detect the signs and symptoms of use of illegal drugs and misuse of alcohol, or

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someone who is known to have direct and personal knowledge of facts, or reasonably believed to have direct and personal knowledge of facts that place the Employee in violation of this policy.

- J. Excitement or confusion
- K. Mood swings
- L. Disorientation or job impairment (inability to perform the job in a routine manner
- M. Glassy eyes
- N. Drowsiness
- O. Euphoria
- P. Irritability
- Q. Aggressiveness
- R. Notification that the Employee has tested non-negative on a drug and/or alcohol test duly administered by any other administrative or law enforcement agency or any Licensed Medical Personnel.

Revenue Service Vehicles include all transit vehicles that are used for passenger transportation service or that require a Commercial Driver's License to operate.

Safety-sensitive Functions include

- A. Operation of a transit Revenue Service Vehicle even when the vehicle is not in revenue service
- B. Operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License ("CDL");
- C. Maintaining a revenue service vehicle or equipment used in revenue service;
- D. Revenue Service Vehicle dispatchers; and
- E. Carrying a firearm for security purposes

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Subject to Duty means an employee who is scheduled to report for work at an assigned time and who has not been finally and completely released from the responsibility of performing further work that day. "Subject to duty" also means any employee who is responsible for being available to perform work on an emergency basis when called to do so (e.g., in an "on-call status"), if said employee is guaranteed extra compensation because of his or her status as being "on call". An employee who is simply responsible for responding, if available, when said employee is not within either definition above, is not considered to be "subject to duty" for the purpose of this policy.

Substance Abuse Professional ("SAP") means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of drug and alcohol related disorders.

Substituted specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Test Refusal. The following are considered a refusal to test if the employee

- A. Fails to appear for any drug, alcohol or related test within a reasonable time, as determined by the employer, after being directed to do so by the employer;
- B. Fails to remain at the testing site until the testing process is complete;
- C. Fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations or as otherwise required.

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In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen

- D. Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- E. Fails or declines to take a second test the employer or collection has directed you to take;
- F. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures
- G. Fails to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
- H. If the MRO reports that there is verified adulterated or substituted test result.
- I. Fails or refuses to take an alcohol test.
- J. Fails or refuses to provide an adequate amount of breath without a valid medical reason.

Verified negative test means a drug test result reviewed by a Medical Revenue Officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services ("DHHS").

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Verified positive test means a drug test result reviewed by a Medical Review Officer and determined to have evidence of a prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised. Refusal to submit to a drug/alcohol test shall also be considered a positive test result and a direct act of insubordination and shall result in termination from employment. A test refusal includes, but may not be limited to, the circumstances set forth in the definition of Test Refusal, above.

Validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted

V. IMPLEMENTATION

Both the City and its employees have responsibilities for the implementation of this policy with the goal of eliminating illegal drug use and misuse of alcohol that has a negative impact on the workplace.

A. Management Responsibilities

(1) The Department Heads and Managers and their designees will fairly and equitably administer and enforce this policy without prejudice or discrimination in an effort to maintain a workplace free from the effects of illegal drug use and misuse of alcohol.

(2) The Department Heads and Managers will adequately educate and train all employees to recognize the attributes, symptoms, and characteristics associated with use of illegal drugs or misuse of alcohol.

(3) The Department Heads and Managers will provide information to all employees as to the dangers and penalties associated

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with use of Illegal Drugs or misuse of alcohol, as well as information regarding counseling services that are available.

(4) The Department Heads and Managers shall not physically search the employee, nor shall they search the personal possessions of employees without the freely-given consent of the employee or as otherwise provided by law, regulation, city policy and the applicable memorandum of understanding.

(5) Department Heads or Managers may request that an employee submit to a drug and/or alcohol test in accordance with the guidelines set forth herein.

(6) Whenever a Department Head or Manager encounters an employee who, after an appropriate request, refuses to complete and sign a medical release and consent form, [Attachment "E"] or refuses to submit to a drug and/or alcohol test upon request, the Department Head or Manager shall remind the employee of the requirements and disciplinary consequences of this policy. Such refusal may be considered insubordination and grounds for disciplinary proceedings up to and including termination.

(7) Where an Employee is *impaired* the Department Head or Manager shall, with the employee's consent and after the employee's submission to a drug and/or alcohol test, detain the employee for a reasonable time until the employee can be safely transported home by the Department Head, Manager or a designee

B. Education and Training

Every employee shall receive a copy of this policy and shall have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40. In addition, all Covered Employees will undergo a minimum of 60 minutes of

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training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate use of **Illegal Drugs**.

All Department Heads, Managers and their designees who are in a position to determine employee fitness for duty shall receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable Illegal Drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse

Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment "B" of this policy.

C. Prohibited Drugs/Substances

(1) Use by an Employee of the Prohibited Drugs/Substances and Illegal Drugs set forth in the definitions is a violation of this policy whether such use is on or off duty.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Department Head or the Human Resource Director and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

(3) Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job

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functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 654 just before, during, or just after the performance of a safety-sensitive job function.

D. Prohibited Conduct

(1) All Employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a Prohibited Drug or Substance in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.

(2) Each Employee is prohibited from consuming alcohol while performing job functions or while on-call to perform job functions. If an on-call employee has consummated alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The Employee will subsequently be relieved of hi/her on-call responsibilities.

(3) The Department Head or Manager shall not permit any Employee to perform or continue to perform job functions if he or she has actual knowledge that the Employee is using alcohol.

(4) Each Employee is prohibited from reporting to work or remaining on duty requiring the performance of Job Functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.

(5) No Employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

(6) No Employee shall consume alcohol within four (4) hours prior to the performance of Job Functions.

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(7) No Employee shall consume alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.

(8) Consistent with the Drug-Free Workplace Act of 1990, all Employees are prohibited from engaging in the unlawful purchase, transport, manufacture, distribution, dispensing, possession, or use of prohibited substances in or outside the work place including Transit Department premises, transit vehicles, while in uniform or not in uniform and while on City of Banning business or off duty.

(9) All Employees are prohibited from engaging in the unlawful purchase, transport, manufacture, distribution, dispensing, possession, or use of prohibited substances in or outside the work place, on or off duty.

E. Drug Statute Conviction

(1) Consistent with the Drug Free Workplace Act of 1990, all Employees are required to notify their Department Head or Supervisor and the Human Resource Director of any criminal drug statute conviction within five calendar days after such conviction becomes final. Failure to comply with this provision shall result in disciplinary action that may include termination for a first violation.

(2) Failure of an employee to report within five calendar days a criminal drug statute conviction for a violation occurring in the workplace or a violation of which the City may lawfully have notice shall be cause for termination.

(3) Loss of driving privileges for a period in excess of 5 working days as a result of the use of any Illegal Drug or misuse of alcohol shall be grounds for termination where the duties of the Employee require them to be readily available to operate a City vehicle or equipment.

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F. Testing Requirements

(1) All Employees

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40. All Employees shall be subject to testing prior to employment, for reasonable suspicion and following an accident as defined in sections "K", "L", and "M" of this policy. Covered Employees are subject to random testing, as defined in section "N" of this policy. All Employees who have tested positive for drugs or alcohol on a random, reasonable suspicion, or post-accident will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

(2) Covered Employees

A drug test can be performed any time a Covered Employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function.

All Covered Employees are subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with the City of Banning. Any Covered Employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section V.O of this policy.

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(3) False Information

Any Employee who is suspected of providing false information in connection with a drug test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo a an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employees' removal from duty and disciplined as defined in Section V.O of this policy. Refusal can also include an inability to provide a sufficient urine specimen or breath sample without a valid medical explanation, as well as a verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame.

G. Drug Testing Procedures

(1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service ("DHHS"). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the Employee, the integrity of the drug testing procedure and the validity of the test result.

(2) The drugs that will be tested for include **Illegal Drugs** as defined in this policy. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT or equivalent Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a DHHS certified laboratory. An

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initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

(3) The test results from the DHHS certified laboratory will be reported to a Medical Review Officer. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Human Resource Director/Drug and Alcohol Program Manager ("DAPM"). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid, without a medical explanation, a retest will be conducted under direct observation.

(4) Any covered employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second DHHS certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time that the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the MRO within 72 hours

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of notice of the original sample verified test result. Requests made after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City of Banning will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however, the City will seek reimbursement for the split sample test from the employee.

(5) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the collector to retest the employee under direct observation.

(6) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the MRO. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

(7) Observed collections. Consistent with 49 CFR Part 40, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

(a) The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the DAPM that there was not an adequate medical explanation for the result; or

(b) The MRO reports to the DAPM that the original positive, adulterated, or substituted test result had to be

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cancelled because the test of the split specimen could not be performed.

(c) DAPM may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(d) The collector must immediately conduct a collection under direct observation if: they are directed by DAPM to do so; or

(e) The collector observes materials brought to the collection site or the employees conduct clearly indicates an attempt to tamper with a specimen or

(f) The temperature on the original specimen was out of range

(g) The original specimen appeared to have been tampered with.

(8) In addition to, and apart from the above, drug testing procedures duly followed and applied by any law enforcement agency following an accident involving an employee are deemed to be adequate to provide evidence of negative or nonnegative result for purposes of this policy.

H. Alcohol Testing Procedures

(1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved Evidential Breath Testing Device (EBT) operated by a trained Breath Alcohol Technician ("BAT"). Alcohol screening tests may be performed using a no-evidential testing device which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed

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using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

(2) An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section V. subparagraph O 1-2 of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive the employee shall still be removed from duty for at least eight hours and will be subject to the consequences described in Section V. subparagraph O.1 of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

(3) If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

(4) In addition to, and separate from the above, alcohol testing procedures duly followed and applied by any law enforcement agency following an Accident involving an Employee are deemed to be adequate to provide evidence of negative or nonnegative result for purposes of this policy.

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I. Pre-Employment Testing

All applicants for employment with the City shall undergo urine drug testing prior to hire. In addition, Covered Employees shall undergo urine testing prior to transfer into a covered position that requires the performance of a safety-sensitive function.

(1) All offers of employment for employment shall be extended conditional upon the applicant passing a drug test. An **Applicant** shall not be hired unless the applicant takes a drug test with verified negative results.

(2) A non-covered employee shall not be placed, transferred or promoted into a position as a **Covered Employee** until the employee takes a drug test with verified negative results.

(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test shall disqualify an applicant for employment for a period of one year. For applicants for a safety sensitive position, evidence of the absence of drug dependency from a **Substance Abuse Professional** that meets with 49 CFR Part 40 as amended and a negative pre-employment drug test will be required prior to subsequent consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section V.O herein.

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(5) If a pre-employment/pre-transfer test is canceled, the City of Banning will require the applicant to take and pass another pre-employment drug test.

(6) In instances where a Covered Employee is on extended leave for any reason for a period of 45 calendar days or more, the employee shall be required to take a drug test under the City of Banning authority and have negative test results prior to return to the safety-sensitive job functions.

(7) In instances where a covered employee has been laid off, but is later recalled to duty, the employee will be required to take a drug and alcohol test prior to resuming active safety-sensitive status if the employee has not been subject to testing or has been out of the random testing pool for more than 45 days.

(8) An applicant with a dilute negative test result will be required to retest.

(9) This subsection does not create any rights in any person who is not an Employee of the City. As to any non-employee, this subsection is directory and not mandatory.

J. Reasonable Suspicion Training

All City of Banning Employees are subject to a drug and/or alcohol test based on **Reasonable Suspicion** as defined in this policy.

A reasonable suspicion drug and/or alcohol test may be performed any time an Employee is on duty or immediately prior to commencement of duty. The City shall be responsible for transporting the employee to the testing site. Department Heads or Managers or their designees shall

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avoid placing themselves and/or others into a situation which might endanger the physical safety of those present.

If the confirmatory drug or alcohol test is nonnegative, the employee shall be placed on administrative leave pending disciplinary action described in Section V. subparagraph O. of this policy.

An employee who refuses an instruction to submit to a Reasonable Suspicion drug and /or alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section V. subparagraph O. of this policy.

A written record of the observations which led to a drug and /or alcohol test based on reasonable suspicion shall be prepared and signed by the Department Head or Manager or their designee making the necessary findings prior to the release of the test results. This written record shall be submitted to the DAPM. The DAPM shall attach the record to the forms reporting the test results.

K. Post Accident Testing

All Employees shall be required to undergo Drug and Alcohol testing if they are involved in an Accident. As applied to Covered Employees this specifically includes all surviving Covered Employees that are operating the vehicle at the time of the accident and any other Employee whose performance cannot be completely discounted as a contributing factor to the accident.

(1) As soon as practicable following an Accident, the Department Head or the Manager or their designee shall notify the Employee or Employees whose performance could have contributed to the Accident of the need for the test. The Department Head or Manager

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or their designee will make the determination using the best information available at the time of the decision.

(2) The appropriate Department Head or Manager or their designee shall ensure that an Employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours after the Accident for alcohol, and within 32 hours for drugs. If an alcohol and/or drug test is not performed within two hours of the Accident, the Department Head or Manager or their designee shall document the reason(s) for the delay. If the alcohol test is not conducted within eight (8) hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

(3) Any Employee involved in an Accident must refrain from alcohol use for eight (8) hours following the Accident, or until he/she undergoes a post-Accident alcohol test.

(4) An Employee who is subject to post-Accident testing who fails to remain readily available for such testing, including notifying a Department Head, Manager or their designee of his or her location if he or she leaves the scene of the Accident prior to submission to such test, may be deemed to have refused to submit to testing.

(5) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an Accident, or to prohibit an Employee from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident, or to obtain necessary emergency medical care.

(6) In the event that the City is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), City of Banning may use drug and alcohol post-Accident test results administered by local law enforcement officials

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in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

L. Random Testing

All Covered Employees are subjected to random, unannounced drug and alcohol testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(1) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.

(2) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals fifty percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.

(3) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.

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(4) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of employees that are included under other authority.

(5) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. Testing can occur during the beginning, middle, or end of an employee's shift.

(6) Employees are required to proceed immediately to the collection site upon notification of their random selection.

(7) Refusal to submit to a random drug test shall be considered a positive test and a direct act of insubordination and shall be cause for termination.

M. Return to Duty Testing

All Employees who previously tested nonnegative on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol) or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. The SAP should test the employee during treatment and should schedule the return-to-duty test only when there is no risk to the safety of the public or other Employees as a consequence of the Employee's use of Illegal Drugs or misuse of alcohol. If the return to duty test is positive, the employee is automatically terminated.

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N. Follow-up Testing

Employees will be required to undergo frequent, unannounced drug and alcohol testing after their return-to-duty following a period of time off as a result of a positive drug and/or alcohol test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion, return-to-duty and other drug or alcohol testing.

O. Result of Drug/Alcohol Test

(1) Removal from Duty

Any Employee that has a verified positive drug or alcohol test will be removed from his/her position immediately. Within 5 working days following the removal they will be informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional ("SAP") for assessment. No employee so removed will be allowed to return to duty without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action as follows:

- (a) As soon as practicable after receiving notice of a non-negative drug test result, a confirmed alcohol test result, or a test refusal, the Drug and Alcohol Program Manager will contact the employee's Department Head or Manager to have the Employee removed from his/her position.

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(b) The employee shall be referred to a Substance Abuse Professional for an assessment within 5 working days or removal.

(c) The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse.

2. Discipline

(a) **First Non-negative Test** For the first instance of a non-negative test from a sample submitted as the result of a post-accident, random, or reasonable suspicion drug/alcohol test (less than 0.04 BAC) disciplinary action against the employee shall include at a minimum:

- (1) Immediate removal from duty for a period of not less than 10 working days.
- (2) Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to work agreement.
- (3) Failure to execute or remain compliant with the return to work agreement shall be cause for termination from employment with the City of Banning. Compliance with the return to work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; and, in the judgment of the SAP, the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced

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follow-up testing as defined in Section "N" of this policy.

- (4) Refusal to submit to a periodic unannounced follow-up drug/alcohol test is a direct act of insubordination and shall be cause for termination.
- (5) A periodic unannounced follow-up drug/alcohol test which results in a non-negative result shall be cause for termination from employment with the City of Banning
- (6) The above notwithstanding, cause for immediate termination exists if there is a post-accident test and the Employee refuses the test or the test is non-negative for any level of Illegal Drugs and/or a blood alcohol level above that permitted for operation of a motor vehicle in the state. Cause for termination shall exist if the Employee is removed from the workplace or is tested while on duty for Reasonable Cause testing and the Employee refuses the test or the test is non-negative for the presence of any legal of Illegal Drugs and/or the Employee has a blood alcohol level above that permitted for operation of a motor vehicle in the state.
- (7) The Employee shall not be excused from any other failure of performance as a result of time lost from work due to compliance with this section. Such failure of performance may be a separate and independent cause for disciplinary action.

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(b) **Second Non-negative Test** The second instance of a non-negative drug or alcohol (greater than 0.04 BAC) test result from a sample submitted under the random, reasonable suspicion, return to duty or follow-up drug/alcohol test at any time during employment with the City shall be cause for immediate termination.

(c) **Non-negative Test Is Cause for Termination** Any non-negative post-Accident drug and/or alcohol (greater than 0.04) test shall be cause for termination. The same shall apply to results of a test administered by a law enforcement agency.

(d) **Alcohol less than .04** A first alcohol test result of greater than 0.02 to less than 0.039 BAC shall be cause for the immediate removal of the Employee from duty for eight (8) hours or the remainder of the work day whichever is longer.

- (1) The employee shall not be allowed to return to duty until he/she submits to an alcohol test and there is a result of less than 0.02 BAC.
- (2) If the Employee has an alcohol test result of greater than 0.02 to less than 0.039 two or more times within a six month period, the employee will be removed from duty and referred to the SAP for assessment and treatment consistent with Section V.O. of this policy.
- (3) The Employee shall not be permitted to return to duty until the SAP approves such return.

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P. Cost of Treatment and Leave

(1) **Employee Responsibility.** The cost of any treatment or rehabilitation services shall be the responsibility of the Employee.

(a) The employee will be permitted to take accrued sick leave to participate in the SAP prescribed treatment program after the SAP has prescribed a treatment program.

(b) If an employee has insufficient accrued leave, the employee may be placed on leave without pay pursuant to the City's Leave Without Pay Policy until the SAP has determined that the employee has successfully completed the required treatment program and releases him/her to return to duty.

(c) Any leave taken, either paid or unpaid, may be considered leave taken under the Family and Medical Leave Act or other leave as appropriate when such leave is initiated as required by law or the rules and regulations of the City.

(2) **Self-Referral** In the instance of a voluntary self-referral to the SAP or other medical care provider, or a management referral resulting from a voluntary statement by the Employee to the Manager or Department Head unaccompanied by a nonnegative drug or alcohol test, action involving the Employee shall include:

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- (a) Mandatory referral to a Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a substance abuse agreement.
- (b) Failure to execute or remain compliant with the substance abuse agreement shall result in termination from employment with the City of Banning. Compliance with the substance abuse agreement shall mean, at a minimum, that the employee has submitted to a drug/alcohol test immediately prior to returning to work following any period of absence for treatment; and, the result of that test is negative: and, in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section "N" of this policy.
- (c) Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall be cause for termination.
- (d) A self-referral or management referral to the SAP that was not precipitated by a non-negative test result does not constitute a violation of the Federal regulations or this policy and will not be considered as a positive test result in relation to the discipline defined in Section V.O of this policy.
- (e) Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a non-negative test result shall be considered a positive test result in relation to the

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progressive discipline defined in Section V.subparagraph O.of this policy.

- (f) Except as otherwise provided, a voluntary self-referral of an Employee does not shield an employee from reasonable suspicion testing and such self-referral may constitute grounds for reasonable suspicion testing.
- (g) A voluntary referral does not shield an employee from the requirement to comply with all drug and alcohol testing.

VI. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Parts 655 for a non-negative Test or Test Refusal are not subject to appeal.

VII. PROPER APPLICATION OF THE POLICY

The City of Banning is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, Department Heads and Managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any Department Head or Manager, or their designee who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates shall be subject to disciplinary action up to and including termination.

VIII. INFORMATION DISCLOSURE

Drug/alcohol testing records shall be maintained by the City of Banning DAPM and, except as provided below or by law, the results of any drug/alcohol

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test shall not be disclosed without express written consent of the tested employee:

- A. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications.
- B. Records of a verified positive drug/alcohol test result shall be released to the City of Banning Drug and Alcohol Program Manager and Department Supervisor on a need to know basis
- C. Records will be released to a subsequent employer only upon receipt of a written request form from the employee.
- D. Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.
- E. Records will be released to the National Transportation Safety Board during an accident investigation.
- F. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- G. Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the City of Banning or the employee.
- H. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 necessary legal steps to contest the issuance of the order will be taken.

IX. SYSTEM CONTACTS

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual:

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- A. Drug & Alcohol Program Manager
City of Banning, Human Resources
99 E. Ramsey Street
Banning, CA 92220
(909) 922-3145

- B. Medical Review Officer:
Dr. Stuart Hoffman
Choicepoint MRO Services
5900 Wilshire Boulevard
Suite 2200
Los Angeles, CA 90036
800.762.3623

- C. Substance Abuse Professional ("SAP")
"The Counseling Team"
1881 Business Center Drive
Suite 11
San Bernardino, CA 92408
(909) 884-0133

- D. DHHS Certified Laboratory Primary Specimen
Quest Diagnostics
7600 Tyrone Avenue
Van Nuys, California 91405
800. 733.6676

- E. DHHS Certified Laboratory Split Specimen
(Provided by MRO at test)

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ATTACHMENT "A"

COVERED EMPLOYEE JOB CLASSIFICATIONS

- Bus Driver
 - Dial -a-Ride Driver
 - Powerline Technicians (consistent with licensing requirements while driving line trucks)
 - Office Assistant (Transit Dispatcher)
 - Equipment Mechanic (Transit)
 - Powerline Crew Supervisors
 - Community Services Manager
 - Equipment Repair Manager
 - Maintenance Workers
 - Senior Maintenance Workers
 - Water Crew Supervisors
 - Asst. Water Superintendent
 - Water Workers I/II
 - Motor Sweeper Operator
- All workers required to have Class A or B driver's license**

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ATTACHMENT "B"

CUT OFF LEVELS INFORMATION

Initial cut off levels

Marijuana Metabolites	50 ng/ml
Cocaine Metabolites	300 ng/ml
Opiate Metabolites	2,000 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

Confirmatory cut off levels

Marijuana Metabolites	15 ng/ml
Cocaine Metabolite	150 ng/ml
Opiates	
Morphine	2,000 ng/ml
Codeine	2,000 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	
Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml
Delta-9-tetrahydrocannabinol-9-carboxylic acid	
Benzoyllecgonine	

Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

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ATTACHMENT "C"

Alcohol Fact Sheet

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

- **Signs and Symptoms of Use**
 - Dulled mental processes
 - Lack of coordination
 - Odor of alcohol on breath
 - Possible constricted pupils
 - Sleepy or stuporous condition
 - Slowed reaction rate
 - Slurred speech

(Note: except for the odor, these are general signs and symptoms of any depressant substance)
- **Health Effects:** The chronic consumption of alcohol (average of three servings per day of beer [12 oz] whiskey [1 oz] or wine [6 oz] over time may result in the following health hazards:
 - Decreased sexual functioning
 - Dependency)up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed "alcoholic")
 - Fatal liver diseases

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- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related)

- Social Issues
 - Two-thirds of all homicides are committed by people who drink prior to the crime.
 - Two to three percent of the driving population is legally drunk at any one time. this rate is doubled at night and on weekends.
 - Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
 - The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
 - Forty percent of family court cases are alcohol problem related.
 - Alcoholics are 15 times more likely to commit suicide than other segments of the population.
 - More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

- The Annual toll
 - 24,000 people will die on the highway due to the legally impaired driver.
 - 12,000 more will die on the highway due to the alcohol-affected driver.
 - 15,800 will die in non-highway accidents.
 - 30,000 will die due to alcohol-caused liver disease.
 - 10,000 will die due to alcohol-induced brain disease or suicide.

CITY OF BANNING

ADMINISTRATIVE POLICY

Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 42 Of 47

- Up to another 125,000 will die due to alcohol-related conditions or accidents.
- Workplace Issues
 - It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body
 - Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
 - A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

CITY OF BANNING		
ADMINISTRATIVE POLICY		
Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 43 Of 47

ATTACHMENT D

CITY OF BANNING REHAB AGREEMENT

I understand that I will be allowed to continue my employment with the City of Banning Transit Agency. I will participate and submit continuing documentation on a monthly basis of my participation in an Agency approved substance abuse treatment program. Additionally, upon successful completion of said program, I will provide the necessary documentation of such.

I agree not to abuse drugs, or alcohol. "Abuse" shall be such on-the-job use, possession, sale or being under the influence as defined in section V of the City of Banning Alcohol and Drug Policy, and as otherwise specifically set forth in this agreement.

In addition to, and not to the exclusion of the above, I understand and agree that any use of the following substances may constitute a violation of this agreement.

Marijuana
Cocaine
Methamphetamine
Heroin
Phencyclidine

Any substance presently designated as a controlled substance in any schedule of controlled substances pursuant to California Health and Safety Code Section 11053 et seq. and as such schedules may be amended in the future, when the use of such substance is not prescribed by a physician.

CITY OF BANNING

ADMINISTRATIVE POLICY

Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 44 Of 47

I understand that in order to return to my employment I must submit to additional alcohol/drug test(s). I also understand that refusal to submit to such a test shall result in the termination of my employment.

I also understand that during the sixty (60) months following my return to work, I may be tested without prior notice.

If, during this 60 months there is any violation of this Policy, my employment with the City will be terminated.

With respect to such termination, I hereby waive any right I may have to a determination of the existence of such violation under any other disciplinary policy. In lieu of and in waiver of my rights under the applicable MOU or any other disciplinary policy, I agree that as to the determination that I have violated this drug policy, the determination shall be made by my immediate supervisor. I shall thereafter have right of appeal to the City Manager. If my supervisor is the City Manager, there is no right of appeal of the disciplinary action. The only issue on any appeal permitted hereunder shall be whether I have in fact used a substance listed herein or misused alcohol in violation of this Agreement and/or the City's Drug Free Workplace Policy. The determination of the City Manager shall be final and without right of further appeal to the City Council or through commencement of legal action in any state or federal court. For purposes of any future legal proceeding I may hereafter commence based on disciplinary action taken against me under this Policy or this Rehab Agreement I hereby stipulate that if the procedures described in his Rehab Agreement for conduct of a hearing have been followed, that all facts relied on by the City Manager in support of the disciplinary action are true. If I have no right of appeal under this Rehab Agreement, I hereby stipulate for purposes of any future litigation, all facts relied on by the City Manager in support of the disciplinary action are true.

When an appeal is made to the City Manager, such appeal shall be made to the City Manager in writing within 5 working days following date of receipt of written notification of the action of the immediate supervisor. Thereafter the City

CITY OF BANNING

ADMINISTRATIVE POLICY

Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 45 Of 47

Manager shall have 10 calendar days within which to set the date for hearing of the appeal. The appeal shall consist of a presentation in writing by my immediate supervisor of the facts upon which the finding of a breach is based. I shall then have an opportunity to appear before the City Manager and challenge the accuracy of such facts; challenge the right of the City to consider such facts; offer mitigation of such facts; or otherwise present such argument to the City Manager, as I deem appropriate. A representative of my choice may represent me. The City Manager shall have 10 calendar days following date of the appeal within which to prepare a written decision. If no decision is provided within this time, the decision of the immediate supervisor shall be deemed sustained. During the appeal period I shall be on leave with pay status.

I understand and agree to all the above conditions.

Date: _____

Employee (signature)

Date: _____

In Witness Thereof Union Business Agent (signature)

Date: _____

In Witness Thereof Personnel Director (signature)

Date: _____

City Manager (signature)

CITY OF BANNING		
ADMINISTRATIVE POLICY		
Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40; as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 46 Of 47

ATTACHMENT "E"

ACKNOWLEDGEMENT OF RECEIPT OF CITY OF BANNING ALCOHOL AND DRUG POLICY AND CONSENT TO DRUG AND ALCOHOL TESTING

I have received a copy of the City of Banning Alcohol and Drug Policy. I understand and acknowledge that compliance with the Policy is a condition of my employment and if I violate any provision of this Policy, I will be subject to disciplinary action, which may include termination. This does not constitute a waiver of my individual constitutional rights.

I understand and acknowledge that I shall not consume alcohol, be under the influence of alcohol, or possess an open container of alcohol, or unlawfully manufacture, distribute, dispense, possess, or use illegal drugs while at City work locations or elsewhere during work hours, during meal and rest periods, while in or operating City vehicles or equipment, while wearing clothing which identifies me as a City employee, or while it is foreseeable that I am subject to being called to duty, or at any time which would interfere with my safe and effective job performance. Exceptions pertaining to alcohol may be allowed while performing an approved police task.

I hereby give my consent for the City to collect breath and/or urine samples from me to determine the presence or use of alcohol, drugs, and/or their metabolites and the use of an EBT to determine the presence of alcohol, under the circumstances specified in the City's Alcohol and Drug Policy. I understand that the City will be informed whether the test is positive or negative, and, if positive, for which drug(s) there was a positive test. I further understand that the quantities discovered by the positive test may be revealed to the City, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of me arising from any verified positive drug and/or alcohol test.

I agree to notify my department head/manager within five calendar days if I am convicted of any violation of a criminal drug law occurring in the workplace.

CITY OF BANNING

ADMINISTRATIVE POLICY

Subject: Drug Free Workplace Policy		Policy No. AP-08
Reference: Code of Federal Regulations: 49 CFR Part 655 and Part 40, as amended from time to time; and the Federal Motor Carriers Safety Act ("FMCSA") regulations	Effective 1/1/96; Revised 9/2001; Revised 6/2003	Page No. 47 Of 47

I agree to notify my department head/manager before beginning work when using, before or during work, drugs, medications, or any other substance which I believe could foreseeably interfere with my effective job performance or operation of a City vehicle or equipment.

Date: _____

Employee (signature)

Employee Name (printed)

EXHIBIT F

**Grant Agreement
between**

**The State of California Department of Water Resources
and**

**The City of Banning,
Agreement Number 4600013806**

Proposition 1 Round 1 Integrated Regional Water Management (IRWM) Implementation Grant

ML 1/14/2021

ME 1/14/2021

CB 1/15/2021

JJ 1/15/2021

**GRANT AGREEMENT BETWEEN THE STATE OF CALIFORNIA
(DEPARTMENT OF WATER RESOURCES) AND
CITY OF BANNING
AGREEMENT NUMBER 4600013806
PROPOSITION 1 ROUND 1 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM)
IMPLEMENTATION GRANT**

THIS GRANT AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" or "DWR," and the City of Banning, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Grantee," which parties do hereby agree as follows:

- 1) **PURPOSE.** The State shall provide funding from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) to the Grantee to assist in financing the projects, which are included in and implemented in an adopted Integrated Regional Water Management Plan (IRWM Plan), pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.). The provision of State funds pursuant to this Agreement shall be construed or interpreted to mean that the IRWM Plan, or any components of the IRWM Plan, implemented in accordance with the Work Plan as set forth in Exhibit A, has been adopted through the IRWM Plan Review Process, and is/are consistent with Water Code section 10530 et seq.
- 2) **TERM OF GRANT AGREEMENT.** The term of this Grant Agreement begins on June 3, 2020, through final payment plus three (3) years unless otherwise terminated or amended as provided in this Grant Agreement. However, all work shall be completed by December 31, 2022, in accordance with the Schedule as set forth in Exhibit C and no funds may be requested after March 31, 2023.
- 3) **GRANT AMOUNT.** The maximum amount payable by the State under this Grant Agreement shall not exceed \$3,537,882.
- 4) **GRANTEE COST SHARE.** The Grantee is required to provide a Local Cost Share (non-state funds) as set forth in Exhibit B (Budget). Local Cost Share may include Eligible Project Costs directly related to Exhibit A incurred after January 1, 2015.
- 5) **BASIC CONDITIONS.**
 - A. Unless exempt as per the 2019 IRWM Implementation Grant Proposal Solicitation Package, project(s) that are subject to the California Environmental Quality Act (CEQA) including final land purchases, shall not be included in this Agreement until the CEQA process is completed and all permits necessary to begin construction are acquired. Projects providing at least 75% of benefits to a disadvantaged community (DAC), economically distressed area (EDA), and/or Tribe (based on population or geography), or projects implemented by Tribes will be exempt from this requirement.
 - i. Such projects will be included in the Agreement as a placeholder. Placeholder projects are not eligible for grant reimbursement and may not submit invoices to DWR until such time as they are fully included in the Agreement.
 - ii. Placeholder projects that complete CEQA and/or acquire permits (necessary to begin construction) within eighteen (18) months of the agreement execution date will be amended into the agreement. At the end of the eighteen (18)-month term, any placeholder projects that fail to complete CEQA and/or acquire permits will be deleted from the Agreement. The total grant award will be reduced by the amount of the deleted project(s). Replacement projects will not be allowed. Reduced amount will be made available to the respective Funding Area in future funding rounds on a competitive basis. Deleted placeholder projects will not be eligible to receive any grant reimbursement under this Agreement; however, such project could be eligible under the next round of grant solicitation.
 - B. The State shall have no obligation to disburse money for the Project(s) under this Grant Agreement until the Grantee has satisfied the following conditions (if applicable):

- i. The Grantee shall demonstrate compliance with all eligibility criteria as set forth on pages 9-11, inclusive, of the 2019 IRWM Implementation Grant Program Guidelines (2019 Guidelines).
- ii. For the term of this Agreement, the Grantee shall submit Quarterly Progress Reports which must accompany an invoice and all invoice backup documentation (\$0 Invoices are acceptable). The Quarterly Progress Report shall be submitted within 60 days following the end of the calendar quarter (i.e. reports due May 30, August 29, November 29, and March 1) and all other deliverables as required by Paragraph 14, "Submission of Reports" and Exhibit A, "Work Plan".
- iii. Prior to the commencement of construction or implementation activities, if applicable, the Grantee shall submit the following to the State.
 1. Final plans and specifications certified, signed and stamped by a California Registered Civil Engineer (or equivalent registered professional as appropriate) to certify compliance for each approved project as listed in Exhibit A of this Grant Agreement.
 2. Work that is subject to the California Environmental Quality Act (CEQA) (including final land purchases) shall not proceed under this Grant Agreement until the following actions are performed:
 - a) The Grantee submits to the State all applicable environmental permits, as indicated on the Environmental Information Form to the State,
 - b) Documents that satisfy the CEQA process are received by the State,
 - c) The State has completed its CEQA process as a Responsible Agency, and
 - d) The Grantee receives written notification from the State of concurrence with the Lead Agency's CEQA documents (s) and State's notice of verification of environmental permit submittal.

The State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, the State will consider the environmental documents and decide whether to continue to fund the project, or to require changes, alterations, or other mitigation. Proceeding with work subject to CEQA prior to the State's concurrence shall constitute a material breach of this Agreement. The Grantee or Local Project Sponsor (LPS) shall also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act (NEPA) by submitting copies of any environmental documents, including Environmental Impact Statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/ implementation.

- iv. A monitoring plan as required by Paragraph 16, "Monitoring Plan Requirements," if applicable.
- 6) DISBURSEMENT OF FUNDS. The State will disburse to the Grantee the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Grant Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. Any and all money disbursed to the Grantee under this Grant Agreement shall be deposited in a non-interest bearing account and shall be used solely to pay Eligible Project Costs.
 - 7) ELIGIBLE PROJECT COST. The Grantee shall apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law and Exhibit B, "Budget". Eligible Project Costs include the reasonable costs of studies, engineering, design, land and easement acquisition and associated legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Reimbursable administrative expenses are the necessary costs incidental but directly related

to the Project included in this Agreement. Costs incurred after the June 2, 2020, may be eligible for reimbursement.

Costs that are not eligible for reimbursement include, but are not limited to, the following items:

- A. Costs, other than those noted above, incurred prior to the award date of this Grant.
 - B. Costs for preparing and filing a grant application.
 - C. Operation and maintenance costs, including post construction performance and monitoring costs.
 - D. Purchase of equipment that is not an integral part of a project.
 - E. Establishing a reserve fund.
 - F. Purchase of water supply.
 - G. Replacement of existing funding sources for ongoing programs.
 - H. Meals, food items, or refreshments.
 - I. Payment of any punitive regulatory agency requirement, federal or state taxes.
 - J. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or acquisition of land by eminent domain.
 - K. Overhead and Indirect Costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Grantee or LPSs; non-project-specific accounting and personnel services performed within the Grantee's or LPS' organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; forums, trainings, and seminars; and, generic overhead or markup. This prohibition applies to the Grantee, LPSs, and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement.
 - L. Mitigation for environmental impacts not resulting from implementation of the Project funded by this program.
- 8) METHOD OF PAYMENT. After the disbursement requirements in Paragraph 5, "Basic Conditions" are met, the State will disburse the whole or portions of State funding to the Grantee, following receipt from the Grantee of an electronic invoice certified and transmitted via electronic/digital signature system (e.g., DocuSign) or via US mail or Express mail delivery of a "wet signature" for costs incurred, including Local Cost Share, and timely Quarterly Progress Reports as required by Paragraph 14, "Submission of Reports." Payment will be made no more frequently than quarterly, in arrears, upon receipt of an invoice bearing the Grant Agreement number. Quarterly Progress Report must accompany an invoice (\$0 Invoices are acceptable) and shall be submitted within 60 days following the end of the calendar quarter (i.e. invoices due May 30, August 29, November 29, and March 1). The State will notify the Grantee, in a timely manner, whenever, upon review of an invoice, the State determines that any portion or portions of the costs claimed are not eligible costs or is not supported by documentation or receipts acceptable to the State. The Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to the State to cure such deficiency(ies). If the Grantee fails to submit adequate documentation curing the deficiency(ies), the State will adjust the pending invoice by the amount of ineligible or unapproved costs.

Invoices submitted by the Grantee shall include the following information:

- A. Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.

- B. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for a project during the period identified in the particular invoice for the implementation of a project.
- C. Invoices shall be submitted on forms provided by the State and shall meet the following format requirements:
- i. Invoices shall contain the date of the invoice, either the time period covered by the invoice or the invoice date received within the time period covered, and the total amount due.
 - ii. Invoices shall be itemized based on the categories (i.e., tasks) specified in Exhibit B, "Budget." The amount claimed for salaries/wages/consultant fees shall include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - iii. One set of sufficient evidence (i.e., receipts, copies of checks, personnel hours' summary table, time sheets) shall be provided for all costs included in the invoice.
 - iv. Each invoice shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as depicted in Paragraph 3, "Grant Amount" and those costs that represent the Grantee's costs, as applicable, in Paragraph 4, "Grantee Cost Share."
 - v. Original signature and date of the Grantee's Project Representative. Submit an electronic invoice, certified and transmitted via electronic/digital signature system (e.g., DocuSign), from authorized representative to the Project Manager or the original "wet signature" copy of the invoice form to the Project Manager at the following address: 707 Fairmont Avenue, Suite 200, Glendale, CA 91203.

All invoices submitted shall be accurate and signed under penalty of law. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee 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., cost share). Any eligible costs for which the Grantee 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 grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to Paragraph D.5 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, 487-489.)

- 9) **ADVANCED PAYMENT.** Water Code section 10551 authorizes advanced payment by the State for projects included and implemented in an applicable Integrated Regional Water Management Plan, and when the project proponent is a nonprofit organization; a disadvantaged community (DAC); or the project benefits a DAC. If a project is awarded less than \$1,000,000 in grant funds, the project proponent may receive an advanced payment of fifty (50) percent of the grant award; the remaining fifty (50) percent of the grant award will be reimbursed in arrears after the advanced funds of a budget category have been fully expended. Within ninety (90) calendar days of execution of the Grant Agreement, the Grantee may provide the State an Advanced Payment Request. Advanced Payment Requests received ninety-one (91) calendar days after the execution of this Agreement will not be eligible to receive an advanced payment. The Advanced Payment Request shall contain the following:
- A. Documentation demonstrating that each Local Project Sponsor (if different from the Grantee, as listed in Exhibit I) was notified about their eligibility to receive an advanced payment and a response from the Local Project Sponsor stating whether it wishes to receive the advanced payment or not.
 - B. If the Grantee is requesting the advanced payment, the request(s) shall include:
 - i. Descriptive information of each project with an update on project status

- ii. The names of the entities that will receive the funding for each project, including, but not limited to, an identification as to whether the project proponent or proponents are nonprofit organizations or a DAC, or whether the project benefits a DAC
 - iii. A detailed Funding Plan which includes how the advanced payment will be expended (in terms of workplan, budget, and schedule) within the timeframe agreed upon by DWR and the Grantee. The Funding Plan must clearly identify the total budget (at Budget Category Level) for each project clearly showing the portion of advanced payment and reimbursement funds.
 - iv. Any other information that DWR may deem necessary
- C. Upon review and approval of the Advanced Payment Request, DWR will authorize payment of the fully requested amount for the qualified project(s). Based on the project's Funding Plan and other considerations, DWR may determine it is not prudent to advance the full request in a single disbursement. In such a case, DWR will develop a "Disbursement Schedule," to disburse funds in installments. This Disbursement Schedule may change based on the project's ongoing compliance with the Advanced Payment requirements and the project's cash flow needs.
- D. Once DWR authorizes the Advanced Payment Request, the Grantee shall submit Advanced Payment Invoice(s) for the initial amount based on the "Disbursement Schedule" on behalf of the LPS(s), containing the request for each qualified project, to the State with signature and date of the Grantee's Project Representative, as indicated in Paragraph 21, "Project Representative." The Grantee shall be responsible for the timely distribution of the advanced funds to the respective LPS(s). The Advanced Payment Invoice(s) shall be submitted on forms provided by the State and shall meet the following format requirements:
- i. Invoice shall contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - ii. Invoice shall be itemized based on the budget categories specified in Exhibit B, "Budget."
 - iii. The State Project Manager will notify the Grantee, in a timely manner, when, upon review of an Advance Payment Invoice, the State determines that any portion or portions of the costs claimed are not eligible costs. The Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to cure such deficiency(ies).
 - iv. On a quarterly basis, the Grantee will submit an Accountability Report to the State that demonstrates how actual expenditures compare with the scheduled budget. The Accountability Report shall include the following information:
 - 1. An itemization of how advanced funds have been spent to-date (Expenditure Report), including documentation that supports the disbursements (e.g., contractor invoices, receipts, personnel hours, etc.). Accountability Reports shall be itemized based on the budget categories (i.e., tasks) specified in Exhibit B.
 - 2. An updated Accountability Report including an updated Funding Plan that depicts how the remaining advanced funds will be expended and the activities and deliverables associated with the advanced funds within the timeframe agreed upon by DWR and the Grantee when the advanced payment request was approved.
 - 3. Documentation that the funds were placed in a non-interest bearing account, including the dates of deposits and withdrawals from that account.
 - 4. Proof of distribution of advanced funds to LPS(s), if applicable.
 - v. The State's Project Manager will notify the Grantee, in a timely manner, when, upon review of the Accountability Report, the State determines that any portion of the expenditures claimed are not eligible costs. The Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to cure such deficiency(ies). If costs are not consistent

with the tasks in Exhibit A, the State will reject the claim and remove them from the Accountability Report.

- E. Once the Grantee has spent all advanced funds in a budget category, then the method of payment will revert to the reimbursement process for that budget category specified in Paragraph 8, "Method of Payment for Reimbursement."

10) REPAYMENT OF ADVANCES. The State may demand repayment from the Grantee of all or any portion of the advanced State funding along with interest at the California general obligation bond interest rate at the time the State notifies the Grantee, as directed by the State, and take any other action that it deems necessary to protect its interests for the following conditions:

- A. A project is not being implemented in accordance with the provisions of the Grant Agreement.
- B. The Grantee has failed in any other respect to comply with the provisions of this Grant Agreement, and if the Grantee does not remedy any such failure to the State's satisfaction.
- C. Failure by the Grantee to submit complete and accurate quarterly Accountability Reports by the required due dates, unless otherwise approved by DWR.
- D. Failure to deposit funds in a non-interest-bearing account.
- E. Use of Advance Payment funds for ineligible expenses and/or activities not consistent with this Agreement.
- F. Inappropriate use of funds, as deemed by DWR.
- G. Repayment amounts may also include:
 - i. Actual costs incurred which are not consistent with the activities presented in Exhibit A, not supported, or are ineligible.
 - ii. Advanced funds which are not fully expended by project completion, notwithstanding Water Code section 10551(c)(4). Unused grant funds shall be returned to DWR within sixty (60) calendar days.

Any repayment of advanced funds may consist of reducing the amount from future reimbursement invoices. The State may consider the Grantee's refusal to repay the requested advanced amount a material breach of this Agreement subject to the default provisions in Paragraph 12, "Default Provisions." If the State notifies the Grantee of its decision to demand repayment or withhold the entire funding amount from the Grantee pursuant to this Paragraph, this Grant Agreement shall terminate upon receipt of such notice by the Grantee and the State shall no longer be required to provide funds under this Agreement.

11) WITHHOLDING OF DISBURSEMENTS BY THE STATE. If the State determines that a project is not being implemented in accordance with the provisions of this Grant Agreement, or that the Grantee has failed in any other respect to comply with the provisions of this Grant Agreement, and if the Grantee does not remedy any such failure to the State's satisfaction, the State may withhold from the Grantee all or any portion of the State funding and take any other action that it deems necessary to protect its interests. Where a portion of the State funding has been disbursed to the Grantee and the State notifies the Grantee of its decision not to release funds that have been withheld pursuant to Paragraph 12, "Default Provisions," the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Grantee, as directed by the State. The State may consider the Grantee's refusal to repay the requested disbursed amount a material breach subject to the default provisions in Paragraph 12, "Default Provisions." If the State notifies the Grantee of its decision to withhold the entire funding amount from the Grantee pursuant to this Paragraph, this Grant Agreement shall terminate upon receipt of such notice by the Grantee and the State shall no longer be required to provide funds under this Grant Agreement and the Grant Agreement shall no longer be binding on either party.

12) DEFAULT PROVISIONS. The Grantee shall be in default under this Grant Agreement if any of the following occur:

- A. Substantial breaches of this Grant Agreement, or any supplement or amendment to it, or any other agreement between the Grantee and the State evidencing or securing the Grantee's obligations;
- B. Making any false warranty, representation, or statement with respect to this Grant Agreement or the application filed to obtain this Grant Agreement;
- C. Failure to operate or maintain the Project in accordance with this Grant Agreement.
- D. Failure to make any remittance required by this Grant Agreement, including any remittance recommended as the result of an audit conducted pursuant to Paragraph D.5.
- E. Failure to submit quarterly progress reports pursuant to Paragraph 5.
- F. Failure to routinely invoice the State pursuant to Paragraph 8.
- G. Failure to meet any of the requirements set forth in Paragraph 13, "Continuing Eligibility."

Should an event of default occur, the State shall provide a notice of default to the Grantee and shall give the Grantee at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Grantee. If the Grantee fails to cure the default within the time prescribed by the State, the State may do any of the following:

- H. Declare the funding be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.
- I. Terminate any obligation to make future payments to the Grantee.
- J. Terminate the Grant Agreement.
- K. Take any other action that it deems necessary to protect its interests.

In the event the State finds it necessary to enforce this provision of this Grant Agreement in the manner provided by law, the Grantee agrees to pay all costs incurred by the State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

13) CONTINUING ELIGIBILITY. The Grantee shall meet the following ongoing requirement(s) and all eligibility criteria outlined in the 2019 Guidelines to remain eligible to receive State funds:

- A. An urban water supplier that receives grant funds pursuant to this Agreement shall maintain compliance with the Urban Water Management Planning Act (UWMP; Wat. Code, § 10610 et seq.) and Sustainable Water Use and Demand Reduction (Wat. Code, § 10608 et seq.) as set forth on page 11 of the 2019 Guidelines and as stated on page 22 of the Proposal Solicitation Package.
- B. An agricultural water supplier receiving grant funds shall comply with Sustainable Water Use and Demand Reduction requirements outlined in Water Code section 10608, et seq. and have their Agricultural Water Management Plan (AWMP) deemed consistent by DWR. To maintain eligibility and continue funding disbursements, an agricultural water supply shall have their 2015 AWMP identified on the State's website. For more information, visit the website listed in Appendix A in the 2019 Guidelines.
- C. A surface water diverter receiving grant funds shall maintain compliance with diversion reporting requirements as outlined in Water Code section 5100 et. seq.
- D. If applicable, the Grantee shall demonstrate compliance with the Sustainable Groundwater Management Act (SGMA) set forth on page 10 of the 2019 Guidelines.
- E. If the Grantee has been designated as a monitoring entity under the California Statewide Groundwater Elevation Monitoring (CASGEM) Program, the Grantee shall maintain reporting compliance, as required by Water Code section 10932 and the CASGEM Program.

F. The Grantee shall adhere to the protocols developed pursuant to The Open and Transparent Water Data Act (Wat. Code, § 12406, et seq.) for data sharing, transparency, documentation, and quality control.

14) SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Grant Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to the State. All reports shall be submitted to the State's Project Manager and shall be submitted via the DWR "Grant Review and Tracking System" (GRanTS). If requested, the Grantee shall promptly provide any additional information deemed necessary by the State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F, "Report Formats and Requirements." The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State of a Project Completion Report is a requirement for the release of any funds retained for such project.

A. Quarterly Progress Reports: The Grantee shall submit quarterly Progress Reports to meet the State's requirement for disbursement of funds. Progress Reports shall be uploaded via GRanTS, and the State's Project Manager notified of upload. Progress Reports shall, in part, provide a brief description of the work performed, the Grantee's activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Grant Agreement during the reporting period. The first Progress Report must accompany an invoice (\$0 Invoices are acceptable) and shall be submitted within 60 days following the end of the calendar quarter (i.e. invoices due May 30, August 29, November 29, and March 1).

B. Accountability Report: The Grantee shall prepare and submit to the State an Accountability Report on a quarterly basis if the Grantee received an advanced payment, consistent with the provisions in Paragraph 9, "Advanced Payment."

C. Project Completion Report: The Grantee shall prepare and submit to the State a separate Project Completion Report for each project included in Exhibit A. The Grantee shall submit a Project Completion Report (or a Component Completion Report, if a Project has multiple Components) within ninety (90) calendar days of Project/Component completion as outlined in Exhibit F.

D. Grant Completion Report: Upon completion of all the Projects included in Exhibit A, the Grantee shall submit to the State a Grant Completion Report. The Grant Completion Report shall be submitted within ninety (90) calendar days of submitting the Completion Report for the final project to be completed under this Grant Agreement, as outlined in Exhibits A, and F. Retention for any grant administration line items in the Budget of this Grant Agreement will not be disbursed until the Grant Completion Report is approved by the State.

E. Post-Performance Reports: The Grantee shall prepare and submit to the State Post-Performance Reports for the applicable project(s). Post-Performance Reports shall be submitted to the State within ninety (90) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated annually for a total of three (3) years after the project begins operation.

15) OPERATION AND MAINTENANCE OF PROJECT. For the useful life of construction and implementation projects and in consideration of the funding made by the State, the Grantee agrees to ensure or cause to be performed the commencement and continued operation of the project, and shall ensure or cause the project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, or operation. The Grantee or their successors may, with the written approval of the State, transfer this responsibility to use, manage, and maintain the property. For purposes of this Grant Agreement, "useful life" means period during which an asset, property, or activity is expected to be

usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal by the Grantee to ensure operation and maintenance of the projects in accordance with this provision may, at the option of the State, be considered a breach of this Grant Agreement and may be treated as default under Paragraph 12, "Default Provisions."

- 16) MONITORING PLAN REQUIREMENTS. A Monitoring Plan shall be submitted to the State prior to disbursement of State funds for construction or monitoring activities. The Monitoring Plan should incorporate Post-Performance Monitoring Report requirements as defined and listed in Exhibit F, and follow the guidance provided in Exhibit J, "Project Monitoring Plan Guidance."
- 17) STATEWIDE MONITORING REQUIREMENTS. The Grantee shall ensure that all groundwater projects and projects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001 (Water Code § 10780 et seq.) and, where applicable, that projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by the State Water Resources Control Board. See Exhibit G for web links and information regarding other State monitoring and data reporting requirements.
- 18) NOTIFICATION OF STATE. The Grantee shall promptly notify the State, in writing, of the following items:
- A. Events or proposed changes that could affect the scope, budget, or work performed under this Grant Agreement. The Grantee agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to the State and the State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.
 - B. Any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide the opportunity for attendance and participation by the State's representatives. The Grantee shall make such notification at least fourteen (14) calendar days prior to the event.
 - C. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during construction, the Grantee agrees that all work in the area of the find shall cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Grantee agrees to implement appropriate actions as directed by the State.
 - D. The initiation of any litigation or the threat of litigation against the Grantee or an LPS regarding the Project or which may affect the Project in any way.
 - E. Applicable to construction projects only: Final inspection of the completed work on a project by a Registered Professional (Civil Engineer, Engineering Geologist, or other State approved certified/licensed Professional), in accordance with Exhibit D. The Grantee shall notify the State's Project Manager of the inspection date at least fourteen (14) calendar days prior to the inspection in order to provide the State the opportunity to participate in the inspection.
- 19) NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Grant Agreement shall be in writing. Notices may be transmitted by any of the following means:
- A. By delivery in person.
 - B. By certified U.S. mail, return receipt requested, postage prepaid.
 - C. By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.

- D. By electronic means.
- E. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U.S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the addresses listed below. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

20) PERFORMANCE EVALUATION. Upon completion of this Grant Agreement, the Grantee's performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Grantee.

21) PROJECT REPRESENTATIVES. The Project Representatives during the term of this Grant Agreement are as follows:

Department of Water Resources

Arthur Hinojosa
Chief, Division of Regional Assistance
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 653-4736
Email: Arthur.Hinojosa@water.ca.gov

City of Banning

Art Vela
Director of Public Works/City Engineer
99 E. Ramsey Street
Banning, CA 92220
Phone: (951) 923-3130
Email: avela@banningca.gov

Direct all inquiries to the Project Manager:

Department of Water Resources

Jennifer Wong
Engineer, Water Resources
707 Fairmont Avenue, Suite 200
Glendale, CA 91203-1035
Phone: (818) 549-2343
Email: jennifer.wong@water.ca.gov

City of Banning

Jennifer Jackson
Management Analyst
99 E. Ramsey Street
Banning, CA 92220
Phone: (951) 923-3135
Email: jjackson@banningca.gov

Either party may change its Project Representative or Project Manager upon written notice to the other party.

22) STANDARD PROVISIONS. This Grant Agreement is complete and is the final Agreement between the parties. The following Exhibits are attached and made a part of this Grant Agreement by this reference:

Exhibit A – Work Plan

Exhibit B – Budget

Exhibit C – Schedule

Exhibit D – Standard Conditions

Exhibit E – Authorizing Resolution

Exhibit F – Report Formats and Requirements

Exhibit G – Requirements for Data Submittal

Exhibit H – State Audit Document Requirements for the Grantee

Exhibit I – Local Project Sponsors and Project Locations

Exhibit J– Project Monitoring Plan Guidance

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

CITY OF BANNING



Arthur Hinojosa
Chief, Division of Regional Assistance

Art Vela
Director of Public Works/City Engineer

Date 1/15/2021

Date 1/15/2021

EXHIBIT A
WORK PLAN**PROPOSITION 1 ROUND 1 SAN GORGONIO IRWM IMPLEMENTATION GRANT****Grant Administration****IMPLEMENTING AGENCY: The City of Banning**

DESCRIPTION: The Grantee will administer these funds and respond to DWR's reporting and compliance requirements associated with the grant administration. The Grantee will act in a coordination role: disseminating grant compliance information to the project managers responsible for implementing the projects contained in this agreement, obtaining and retaining evidence of compliance (e.g., CEQA/NEPA documents, reports, monitoring compliance documents, labor requirements, etc.), obtaining data for progress reports from individual project managers, assembling and submitting progress reports to the State, and coordinating all invoicing and payment of invoices.

Budget Category (a): Project AdministrationTask 1: Agreement Administration

The Grantee will respond to DWR's reporting and compliance requirements associated with the grant administration and will coordinate with the project managers responsible for implementing the projects contained in this agreement.

Task 2: Invoicing

The Grantee will be responsible for compiling invoices for submittal to DWR. This includes collecting invoice documentation from each of the Local Project Sponsors and compiling the information into a DWR Invoice Packet.

Deliverables:

- Quarterly Invoices and associated backup documentation

Task 3: Reporting

The Grantee will be responsible for compiling progress reports for submittal to DWR. The Grantee will coordinate with Local Project Sponsor's staff to retain consultants as needed to prepare and submit progress reports and final project completion reports for each project, as well as the grant completion report.

Reports will meet generally accepted professional standards for technical reporting and the requirements terms of the contract with DWR outlined in Exhibit F of this Agreement.

Deliverables:

- Quarterly Progress Reports
- Grant Completion Report

PROJECT 1: Altitude Valves Installation Project**IMPLEMENTING AGENCY: The City of Banning****PROJECT DESCRIPTION:**

The project will install altitude valves at the two San Gorgonio Reservoirs (collectively referred to as the San Gorgonio Tanks Site) and at the Southwest Reservoir. The San Gorgonio Tank Site is located along Bluff Street, adjacent to San Gorgonio Memorial Park, in the northeastern portion of the City of Banning (City). The Southwest Reservoir is located just south of Breckenridge Avenue in the southwestern portion of the City. Once the City of Banning's reservoirs are retrofitted with altitude valves, all reservoirs will be able to operate at their designed maximum water level, with an anticipated increase in usable storage of approximately 1.7 million gallons. The additional water storage will enable increased pumping during off-peak hours and conserving energy during on-peak. Work includes installation of the valves and sensors that detect when the reservoir is full, and when the valves should close.

Budget Category (a): Project AdministrationTask 1: Project Management

Manage grant agreement including compliance with grant requirements, and preparation and submission of supporting grant documents. Prepare invoices including relevant supporting documentation for submittal to DWR. This task also includes administrative responsibilities associated with the project such as coordinating with partnering agencies and managing consultants/contractors.

Deliverables:

- Invoices and associated backup documentation

Task 2: Reporting

Prepare progress reports detailing work completed during reporting period as outlined in Exhibit F of this Agreement for submittal to DWR.

Prepare draft Project Completion Report and submit to DWR no later than 90 days after project completion for DWR Project Manager's comment and review. The report shall be prepared and presented in accordance with guidance as outlined in Exhibit F.

Deliverables:

- Quarterly Project Progress Reports
- Project Completion Report
- Documentation (e.g., photo) of "Acknowledgment of Credit & Signage" per Standard Condition D.2

Budget Category (b): Land Purchase/EasementTask 3: Land Purchase

Not applicable.

Budget Category (c): Planning/Design/Engineering/Environmental DocumentationTask 4: CEQA Documentation

A Notice of Exemption was filed for the two San Gorgonio altitude valve sites with the County of Riverside in September of 2020. A Notice of Exemption was filed with the County of Riverside for the Southwest reservoir in September 2020. Prepare letter stating no legal challenges (or addressing legal challenges).

Deliverables:

- Completed CEQA documents as required
- Legal Challenges Letter

Task 5: Permitting

No permits are required for construction of the project, which will occur on Grantee-owned property and at Grantee-owned facilities.

Deliverables:

- N/A

Task 6: Design

Design work includes surveying and mapping for the project boundaries, developing design plans, specifications, and a cost estimate. All designs will comply with applicable construction and health and safety standards, such as American Water Works Association standards for materials, construction, and testing of valves and pipes. It also includes identification of and notification to utilities in the project area (as applicable), and by the design consultant during the bidding process.

Deliverables:

- 100% Design Plans and Specifications
- Notification letters to Utilities, as applicable

Task 7: Project Monitoring Plan

Develop and submit a Project Monitoring Plan per Paragraph 16 (guidance provided in Exhibit J) for DWR's review and approval.

Deliverables:

- Project Monitoring Plan

Budget Category (d): Construction/Implementation**Task 8: Contract Services**

This task must comply with the Standard Condition D.11 – Competitive Bidding and Procurements. Activities necessary (as applicable) to secure a contractor and award the contract, including: develop bid documents, prepare advertisement and contract documents for construction contract bidding, conduct pre-bid meeting, bid opening and evaluation, selection of the contractor, award of contract, and issuance of notice to proceed.

Deliverables:

- Bid Documents
- Proof of Advertisement
- Award of Contract
- Notice to Proceed

Task 9: Construction Administration

This task includes managing contractor submittal review, answering requests for information, and issuing work directives. A part-time engineering construction observer will be on site for the duration of the project. Construction observer duties include: documenting of pre-construction conditions, updating daily construction

diary, preparing change orders, addressing questions of contractors on site, reviewing/ updating project schedule, reviewing contractor log submittals and pay requests, forecasting cash flow, and notifying contractor if work is not acceptable. After the project is complete, the engineering construction observer will provide a notice of completion to Grantee. Upon completion of the project, the DWR Certificate of Project Completion and record drawings will be provided to DWR.

Deliverables:

- DWR Certificate of Project Completion
- Record Drawings

Task 10: Construction

The altitude valves will be installed on existing reservoir pipelines and operation of the valves is automatic and does not require an external power source. Construction includes site preparation, valve installation, testing, and restoration to pre-construction conditions.

Construction activities are outlined below.

10(a): Mobilization and Demobilization. Contractor will mobilize equipment to the project sites at the start of construction, and demobilize equipment following completion of construction.

10(b): Site preparation will include the draining and removal of old pipe and valves currently installed at the site and valve locations, as well as pre-construction photography.

10(c): Install, construct, excavate: There will be site excavation work. Construction includes installation of new concrete vaults and valve system. For each of the three reservoirs (Southwest Reservoir and the two reservoirs at the San Gorgonio Tanks Site), valve installation includes installation of a valve vault or box suitable for a 16-inch altitude valve, installation of the altitude valve within the valve box, and connection to the water main and reservoir. The Grantee's contractor will also install valve controllers, position indicators, and butterfly valves to provide control of water flows and levels, air vacuum and releases valves, access hatches for the vaults, and steel pipes and fittings to connect the altitude valves to the existing system. Following installation of the altitude valves at each reservoir, testing will be conducted to ensure they are functioning properly, and the construction area will be restored to pre-construction conditions (asphalt restoration only). The controllers and position indicators will be integrated into the Grantee's Supervisory Control and Data Acquisition (SCADA) system.

Deliverables:

- Photographic Documentation of Progress and post-construction conditions
- System Performance Test Results

PROJECT 2: Isolation Valve Improvement Project**IMPLEMENTING AGENCY: Cabazon Water District****PROJECT DESCRIPTION:**

The project will consist of furnishing and installing approximately 105 new isolation valves in the Cabazon Water District's water system to provide additional operational flexibility in the system and reduce the number of customers adversely affected by system outages. The increased quantity of isolation valves will drastically reduce the amount of water lost during pipeline dewatering and limit the number of customers affected by these outages. The reduction in energy usage will reduce carbon emissions by approximately 13.4 megatonnes (MT) per year.

Budget Category (a): Project AdministrationTask 1: Project Management

Manage grant agreement including compliance with grant requirements, and preparation and submission of supporting grant documents and coordination with IRWM regional manager and the Grantee. Prepare invoices including relevant supporting documentation for submittal to DWR via the Grantee. This task also includes administrative responsibilities associated with the project such as coordinating with partnering agencies and managing consultants/contractors.

Deliverables:

- Invoices and associated backup documentation

Task 2: Reporting

Prepare progress reports detailing work completed during reporting period as outlined in Exhibit F of this Agreement for submittal to DWR.

Prepare draft Project Completion Report and submit to DWR no later than 90 days after project completion for DWR Project Manager's comment and review. The report shall be prepared and presented in accordance with guidance as outlined in Exhibit F.

Deliverables:

- Quarterly Project Progress Reports
- Project Completion Report
- Documentation (e.g., photo) of "Acknowledgment of Credit & Signage" per Standard Condition D.2

Budget Category (b): Land Purchase/EasementTask 3: Land Purchase

Not applicable.

Budget Category (c): Planning/Design/Engineering/Environmental DocumentationTask 4: CEQA Documentation

A Notice of Exemption was filed with Riverside County in 2019 for this project. Prepare letter stating no legal challenges (or addressing legal challenges).

Deliverables:

- Completed CEQA documents as required

- Legal Challenges Letter

Task 5: Permitting

The project is located within existing paved road rights-of-way throughout the Cabazon Water District's service area, in the Community of Cabazon. Once the work is awarded to a Contractor, the Contractor will secure an encroachment permit from Riverside County to perform work within Riverside County's rights-of-way.

No other permits are required for project construction or implementation.

Deliverables:

- Permits as required

Task 6: Design

This task includes the development of draft designs (30%, 60%, 90% design) which identify the approximate locations of all new valves. The project will be designed to maximize operational flexibility and minimize the number of people or length of time affected by outages, as well as access for construction. Afterwards, 100% design drawings would then be finalized. All designs will comply with applicable construction and health and safety standards, such as American Water Works Association standards for valves.

Deliverables:

- 100% Design Plans and Specifications

Task 7: Project Monitoring Plan

Develop and submit a Project Monitoring Plan per Paragraph 16 (guidance provided in Exhibit J) for DWR's review and approval.

Deliverables:

- Project Monitoring Plan

Budget Category (d): Construction/Implementation

Task 8: Contract Services

This task must comply with the Standard Condition D.11 – Competitive Bidding and Procurements. Activities necessary (as applicable) to secure a contractor and award the contract, including: develop bid documents, prepare advertisement and contract documents for construction contract bidding, conduct pre-bid meeting, bid opening and evaluation, selection of the contractor, award of contract, and issuance of notice to proceed.

Deliverables:

- Bid Documents
- Proof of Advertisement
- Award of Contract
- Notice to Proceed

Task 9: Construction Administration

This task includes managing contractor submittal review, answering requests for information, and issuing work directives. A full-time engineering construction observer will be on site for the duration of the project. Construction observer duties include: documenting of pre-construction conditions, updating daily construction

diary, preparing change orders, addressing questions of contractors on site, reviewing/ updating project schedule, reviewing contractor log submittals and pay requests, forecasting cash flow, and notifying contractor if work is not acceptable. After the project is complete, the Contract Administrator will provide a notice of completion to the Cabazon Water District. Upon completion of the project, the DWR Certificate of Project Completion and record drawings will be provided to DWR.

Deliverables:

- DWR Certificate of Project Completion
- Record Drawings

Task 10: Construction

Construction will include excavation, valve installation, pipeline restraint (as required by addition of isolation valves), backfill and compaction, trench shoring, traffic control, and pavement replacement. Valve testing (to ensure valves are fully operational in the open and closed positions) will begin as sections of the system are completed.

Construction activities are outlined below.

10(a): Mobilization and Demobilization: Because valves will be installed throughout the Cabazon Water District's network, mobilization and demobilization will occur in different areas across the system at different times. Mobilization and demobilization include moving equipment to and from the site and set up and breakdown of equipment following valve installation and testing. Final demobilization at the site will be completed to remove equipment.

10(b): Site preparation: To prepare sites for construction, the Contractor will identify underground utilities to avoid, traffic control activities (as necessary), and any other activities required for the safe and clear access to the valve location.

10(c): Install, construct, excavate: Once mobilization and site preparation are complete for a given area, the Contractor will install valves in that area. This includes excavation for safe access to the valve locations and installation of the new valve. Approximately 36 six-inch, 48 eight-inch, and 12 ten-inch gate valves; and 5 twelve-inch and 4 sixteen-inch butterfly valves will be installed, for a total of 105 valves. Installation of the valves will require trench excavation and shoring; bedding, backfill, and compaction; pavement replacement; valve cans and valve collars; and testing of the new valves. Following installation of valves, the Contractor will restore the disturbed area to pre-construction conditions. This includes backfilling valve trenches and trench pavement repair (and striping, if required) to restore sites to pre-construction conditions.

Deliverables:

- Photographic Documentation of Progress
- System Performance Test Results

PROJECT 3: Location #2 Waterline Replacement Project**IMPLEMENTING AGENCY: The City of Banning**

PROJECT DESCRIPTION: The Location #2 Waterline Replacement Project will improve water conservation within the City of Banning distribution system by replacing undersized and leaking pipelines and replacing approximately 49 manual water meters with smart meters. This project will replace undersized pipes that have reached the end of their useful life and relocate them from narrow easements behind private property to the street within the public right-of-way. The new water main will be properly sized for adequate fire protection and have a minimum expected life of 80 years. Additionally, the Grantee will install approximately 12 fire hydrants within the City of Banning. The project will save 16.6 acre-feet per year (AFY) and reduce carbon emissions by 7.3 MT each year.

Budget Category (a): Project AdministrationTask 1: Project Management

Manage grant agreement including compliance with grant requirements, and preparation and submission of supporting grant documents. Prepare invoices including relevant supporting documentation for submittal to DWR. This task also includes administrative responsibilities associated with the project such as coordinating with partnering agencies and managing consultants/contractors.

Deliverables:

- Invoices and associated backup documentation

Task 2: Reporting

Prepare progress reports detailing work completed during reporting period as outlined in Exhibit F of this Agreement for submittal to DWR.

Prepare draft Project Completion Report and submit to DWR no later than 90 days after project completion for DWR Project Manager's comment and review. The report shall be prepared and presented in accordance with guidance as outlined in Exhibit F.

Deliverables:

- Quarterly Project Progress Reports
- Project Completion Report
- Documentation (e.g., photo) of "Acknowledgment of Credit & Signage" per Standard Condition D.2

Budget Category (b): Land Purchase/EasementTask 3: Land Purchase

Not applicable.

Budget Category (c): Planning/Design/Engineering/Environmental DocumentationTask 4: CEQA Documentation

A Notice of Exemption was filed in Riverside County in July 2020 for this project. Prepare letter stating no legal challenges (or addressing legal challenges).

Deliverables:

- Completed CEQA documents as required
- Legal Challenges Letter

Task 5: Permitting

The Grantee will construct the new water main within its existing public right-of-way (i.e., streets). To reconnect the water services from the back of homes to the front of homes, the Grantee will obtain right-of-entry permits from each affected property owner (49 properties).

Deliverables:

- Permits as required

Task 6: Design

The Grantee and its contractors will prepare design documents for the new water lines and fire hydrants. Meter installation does not require design work. Design will identify the locations of replacement lines and meters. All designs will comply with applicable construction and health and safety standards, such as American Water Works Association standards for pipelines and materials.

Deliverables:

- 100% Design Plans and Specifications

Task 7: Project Monitoring Plan

Develop and submit a Project Monitoring Plan per Paragraph 16 (guidance provided in Exhibit J) for DWR's review and approval.

Deliverables:

- Project Monitoring Plan

Budget Category (d): Construction/Implementation

Task 8: Contract Services

This task must comply with the Condition D.11 – Competitive Bidding and Procurements. Activities necessary (as applicable) to secure a contractor and award the contract, including: develop bid documents, prepare advertisement and contract documents for construction contract bidding, conduct pre-bid meeting, bid opening and evaluation, selection of the contractor, award of contract, and issuance of notice to proceed.

Deliverables:

- Bid Documents
- Proof of Advertisement
- Award of Contract
- Notice to Proceed

Task 9: Construction Administration

This task includes managing contractor submittal review, answering requests for information, and issuing work directives. A full-time engineering construction observer will be on site for the duration of the project. Construction observer duties include: documenting of pre-construction conditions, updating daily construction diary, preparing change orders, addressing questions of contractors on site, reviewing/ updating project schedule, reviewing contractor log submittals and pay requests, forecasting cash flow, and notifying contractor if work is not acceptable. After the project is complete, the engineering construction observer will

provide a notice of completion to the Grantee. Upon completion of the project, the DWR Certificate of Project Completion and record drawings will be provided to DWR.

Deliverables:

- DWR Certificate of Project Completion
- Record Drawings

Task 10: Construction

Construction activities are outlined below.

10(a): Mobilization and Demobilization: At the start of construction, the Grantee's contractors will move equipment to the project site and set it up. At the end of construction, the contractor will demobilize, breaking down and removing equipment from the project area.

10(b): Site preparation will include: Construction sites will be prepared, and includes noticing to customers as necessary, development and implementation of traffic control activities (as necessary), identification of existing underground utilities to avoid, and any other activities required for the safe and clear access to the pipeline and meter locations.

10(c): Construction includes excavation and removal of portions of the existing watermain along Nicolet Street, excavation for the new pipeline (open trenching within the existing right-of-way), installation of approximately 12 new fire hydrants, and installation of approximately 49 smart meters. This task also includes abandoning in place of the portion of the existing watermain that is not removed and testing of the new main, hydrants, and smart meters. Once construction is complete, the Grantee's contractor will restore the disturbed areas to pre-construction conditions, which requires backfilling in areas where excavation occurred and repaving and painting sites as necessary to restore to pre-construction conditions.

Deliverables:

- Photographic Documentation of Progress
- System Testing Data

PROJECT 4: Smart Metering Installation Project**IMPLEMENTING AGENCY: The City of Banning****PROJECT DESCRIPTION:**

The project will convert approximately 10,500 manually read meters in the City of Banning into an Automatic Metering Infrastructure (AMI) system that stores detailed consumption information. The Grantee's meter vendor will train Grantee staff on meter installation, which will be conducted by Grantee employees, while training will also be provided to the Grantee's IT staff on the software that will be used with the system and how to understand the data provided by the meters. This data will be housed in the cloud and disseminated to the Grantee and to individual customers.

In addition to smart meters, the Grantee will install leak sensors in the distribution system to detect and locate leaks before they surface. These sensors will be deployed strategically within areas known to have high occurrences of leaks. The Grantee will use the new data to improve planning and estimate indoor versus outdoor water use to help drive future conservation programs. Estimated water conservation is 686 AFY. The project will reduce carbon emissions by approximately 307.5 MT each year.

Budget Category (a): Project AdministrationTask 1: Project Management

Manage grant agreement including compliance with grant requirements, and preparation and submission of supporting grant documents and coordination with IRWM regional manager. Prepare invoices including relevant supporting documentation for submittal to DWR, as Grantee. This task also includes administrative responsibilities associated with the project such as coordinating with partnering agencies and managing consultants/contractors.

Deliverables:

- Invoices and associated backup documentation

Task 2: Reporting

Prepare progress reports detailing work completed during reporting period as outlined in Exhibit F of this Agreement for submittal to DWR.

Prepare draft Project Completion Report and submit to DWR no later than 90 days after project completion for DWR Project Manager's comment and review. The report shall be prepared and presented in accordance with guidance as outlined in Exhibit F.

Deliverables:

- Quarterly Project Progress Reports
- Project Completion Report
- Documentation (e.g., photo) of "Acknowledgment of Credit & Signage" per Standard Condition D.2

Budget Category (b): Land Purchase/EasementTask 3: Land Purchase

Not applicable.

Budget Category (c): Planning/Design/Engineering/Environmental Documentation**Task 4: CEQA Documentation**

A Notice of Exemption was filed in Riverside County in September 2019 for this project. Prepare letter stating no legal challenges (or addressing legal challenges).

Deliverables:

- Completed CEQA documents as required
- Legal Challenges Letter

Task 5: Permitting

No permits are required for the proposed project. All project work is located within Grantee-owned properties or replacing Grantee-owned meters.

Deliverables:

- N/A

Task 6: Design

Project design activities include development of a Radio/Line of Site Propagation Study by the meter vendor, which will identify where data collectors and repeaters will be installed.

Deliverables:

- Radio/Line of Site Propagation Study (final meter and sensor installation plan)
- Vendor Specifications

Task 7: Project Monitoring Plan

Develop and submit a Project Monitoring Plan per Paragraph 16 for DWR's review and approval.

Deliverables:

- Project Monitoring Plan

Budget Category (d): Construction/Implementation**Task 8: Contract Services**

This task must comply with the Standard Condition D.11 – Competitive Bidding and Procurements. Activities necessary (as applicable) to secure a vendor and award the contract, including: develop bid documents, research of automated meter reading (AMR) versus automated meter infrastructure (AMI) technologies, interviews with agencies who have implemented smart metering, request for proposals, selection of the vendor, implementation and completion of a 100-meter pilot study, award of contract, and issuance of notice to proceed.

Deliverables:

- Bid Documents/Proposals
- Award of Contract
- Notice to Proceed
- Final Meter Pilot Study

Task 9: Construction Administration

This task includes managing the contractor and project team. Activities include a kick-off meeting, and refined schedule and budget. This task also includes the Grantee's staff time to oversee staff installation of meters, regular team meetings, and to coordinate with the vendor for delivery and testing of the meters and sensors. Upon completion of the project, the DWR Certificate of Project Completion will be provided to DWR.

Deliverables:

- DWR Certificate of Project Completion

Task 10: Construction

Construction activities include installation of meters, sensors, and related infrastructure. Implementation activities include software rollout necessary to operate the automatic metering system. New smart meters will be installed within the existing meter boxes, and the existing old meters will be removed.

Construction activities are outlined below.

10(a): Mobilization and Demobilization: None required.

10(b): Project preparation: The Grantee will use its own staff to install and maintain the AMI meter system, its vendor will provide training to City staff regarding installation, operation, and maintenance of the meters to ensure successful long-term success of the project, as well as training on the software system and developing reports.

10(c): Grantee staff will install approximately 10,500 radios and 10,500 multijet and ultra-sonic meters ranging in size from 0.75-inch to 8-inch. Staff will configure meters to capture hourly data. Each meter box will also be installed with an encoder receiver transmitter. Staff will also install approximately 10 advanced acoustic leak sensors approximately every 1,000 feet, depending on the pipe material. Installation of these sensors will not require excavation. In addition to the meters, Grantee staff will install approximately five hydropower generators to enhance its infrastructure by power telemetry (i.e., SCADA) equipment that will monitor flows across pressure zones to detect leaks more quickly.

Once the metering network is installed, the Grantee's AMI vendor will install and test AMI software to process and integrate AMI-collected data for system analytics. Each meter will be assigned a data file to track information for each meter and associated account.

During construction and at or before rollout of the customer interface for the software, the Grantee will educate its customers on the logistics and benefits of installation of the new systems. This outreach will help customers understand the additional use data that will be available to them to help them manage their water use. Outreach will include website posts about the project, a video on the Grantee's public news channel, and information on using the new AMI software

Deliverables:

- Photographic Documentation of Progress
- Installation completion report
- System handbooks
- Copies of customer outreach materials

EXHIBIT B**BUDGET****PROPOSITION 1 ROUND 1 SAN GORGONIO IRWM IMPLEMENTATION GRANT****AGREEMENT BUDGET SUMMARY**

		Grant Amount	Required Cost Share: Non-State Fund Source	Other Cost Share	Total Cost	Percent Cost Share
	Grant Administration	\$13,248	N/A	\$0	\$13,248	N/A
	PROJECTS					
1	Altitude Valves Installation	\$481,792	\$0	\$266,750	\$748,542	0%
2	Isolation Valve Improvement	\$1,228,985	\$0	\$14,050	\$1,243,035	0%
3	Location #2 Waterline Replacement	\$1,710,907	\$0	\$60,869	\$1,771,776	0%
4	Smart Metering Installation	\$102,950	\$0	\$2,810,701	\$2,913,651	0%
	GRAND TOTAL	\$3,537,882	\$0	\$3,152,370	\$6,690,252	-

Grant Administration

Implementing Agency: City of Banning

BUDGET CATEGORY		Grant Amount	Required Cost Share: Non-State Fund Source*	Other Cost Share	Total Cost
a	Project Administration	\$13,248	N/A	\$0	\$13,248
TOTAL COSTS		\$13,248	N/A	\$0	\$13,248

PROJECT 1: Altitude Valves Installation Project

Implementing Agency: City of Banning

Project directly serves a need of a Disadvantaged Community: **Yes**

BUDGET CATEGORY		Grant Amount	Required Cost Share: Non-State Fund Source*	Other Cost Share**	Total Cost
a	Project Administration	\$5,952	\$0	\$0	\$5,952
b	Land Purchase / Easement	\$0	\$0	\$0	\$0
c	Planning / Design / Engineering / Environmental Documentation	\$0	\$0	\$56,185	\$56,185
d	Construction / Implementation	\$475,840	\$0	\$210,565	\$686,405
TOTAL COSTS		\$481,792	\$0	\$266,750	\$748,542

NOTES: Eligible costs for each Budget Category will only be approved for reimbursement and Cost Share for the work completed within the date ranges listed in Exhibit C.

*Grantee received full cost share waiver. Cost share is 0%.

**Other Cost Share will be paid by City of Banning.

PROJECT 2: Isolation Valve Improvement Project

Implementing Agency: Cabazon Water District

Project directly serves a need of a Disadvantaged Community: **Yes**

BUDGET CATEGORY		Grant Amount	Required Cost Share: Non-State Fund Source*	Other Cost Share**	Total Cost
a	Project Administration	\$34,307	\$0	\$0	\$34,307
b	Land Purchase / Easement	\$0	\$0	\$0	\$0
c	Planning / Design / Engineering / Environmental Documentation	\$52,458	\$0	\$14,050	\$66,508
d	Construction / Implementation	\$1,142,220	\$0	\$0	\$1,142,220
TOTAL COSTS		\$1,228,985	\$0	\$14,050	\$1,243,035

NOTES: Eligible costs for each Budget Category will only be approved for reimbursement and Cost Share for the work completed within the date ranges listed in Exhibit C.

*Grantee received 100% cost share waiver.

**Other Cost Share will be paid by Cabazon Water District general funds

PROJECT 3: Location #2 Waterline Replacement Project

Implementing Agency: City of Banning

Project directly serves a need of a Disadvantaged Community: **Yes**

BUDGET CATEGORY		Grant Amount	Required Cost Share: Non-State Fund Source*	Other Cost Share**	Total Cost
a	Project Administration	\$0	\$0	\$17,096	\$17,096
b	Land Purchase / Easement	\$0	\$0	\$0	\$0
c	Planning / Design / Engineering / Environmental Documentation	\$0	\$0	\$43,773	\$43,773
d	Construction / Implementation	\$1,710,907	\$0	\$0	\$1,710,907
TOTAL COSTS		\$1,710,907	\$0	\$60,869	\$1,771,776

NOTES: Eligible costs for each Budget Category will only be approved for reimbursement and Cost Share for the work completed within the date ranges listed in Exhibit C.

*Grantee received 100% cost share waiver.

**Other Cost Share will be paid by City of Banning and Water Enterprise Fund.

PROJECT 4: Smart Metering Installation Project

Implementing Agency: City of Banning

Project directly serves a need of a Disadvantaged Community: **Yes**

BUDGET CATEGORY		Grant Amount	Required Cost Share: Non-State Fund Source*	Other Cost Share**	Total Cost
a	Project Administration	\$0	\$0	\$14,400	\$14,400
b	Land Purchase / Easement	\$0	\$0	\$0	\$0
c	Planning / Design / Engineering / Environmental Documentation	\$0	\$0	\$2,360	\$2,360
d	Construction / Implementation	\$102,950	\$0	\$2,793,941	\$2,896,891
TOTAL COSTS		\$102,950	\$0	\$2,810,701	\$2,913,651

NOTES: Eligible costs for each Budget Category will only be approved for reimbursement and Cost Share for the work completed within the date ranges listed in Exhibit C.

*Grantee received 100% cost share waiver.

**Other Cost Share will be paid by Bureau of Reclamation WaterSMART Grant (\$300,000), City of Banning and Water Enterprise Fund.

**EXHIBIT C
SCHEDULE****PROPOSITION 1 ROUND 1 SAN GORGONIO IRWM IMPLEMENTATION GRANT****Grant Administration**

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/01/2020	12/31/2022

PROJECT 1: Altitude Valves Installation Project

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/07/2020	09/30/2022
b	Land Purchase / Easement	N/A	N/A
c	Planning / Design / Engineering / Environmental Documentation	09/10/2018	10/30/2020
d	Construction / Implementation	11/01/2020	06/30/2022

PROJECT 2: Isolation Valve Improvement Project

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/07/2020	2/28/2022
b	Land Purchase / Easement	N/A	N/A
c	Planning / Design / Engineering / Environmental Documentation	11/01/2018	06/18/2021
d	Construction / Implementation*	03/22/2021	11/30/2021

*Category d and Category c overlap due to encroachment permits that must be acquired by the contractor.

PROJECT 3: Location #2 Waterline Replacement

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/07/2020	01/15/2022
b	Land Purchase / Easement	N/A	N/A
c	Planning / Design / Engineering / Environmental Documentation	04/15/2015	09/15/2020
d	Construction / Implementation	10/01/2020	10/01/2021

PROJECT 4: Smart Metering Installation Project

BUDGET CATEGORY		Start Date	End Date
a	Project Administration	07/07/2020	12/31/2022
b	Land Purchase / Easement	N/A	N/A
c	Planning / Design / Engineering / Environmental Documentation	09/08/2019	10/01/2021
d	Construction / Implementation*	10/15/2019	09/30/2022

* The overlap in Category c and Category d is due to parallel activities occurring in design/integration and construction/implementation.

EXHIBIT D**STANDARD CONDITIONS**

- D.1. **ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:**
- A. **Separate Accounting of Funding Disbursements:** Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
 - B. **Disposition of Money Disbursed:** All money disbursed pursuant to this Funding Agreement shall be deposited in a non-interest bearing account, administered, and accounted for pursuant to the provisions of applicable law.
 - C. **Remittance of Unexpended Funds:** Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) calendar days of the expiration of the Funding Agreement, whichever comes first.
- D.2. **ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE:** Funding Recipient shall include appropriate acknowledgement of credit to the State for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient's headquarters and shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and through an agreement with the State Department of Water Resources." The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.
- D.3. **AMENDMENT:** This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. Requests solely for a time extension must be submitted at least 90 days prior to the work completion date set forth in Paragraph 2. Any other request for an amendment must be submitted at least 180 days prior to the work completion date set forth in Paragraph 2. State shall have no obligation to agree to an amendment.
- D.4. **AMERICANS WITH DISABILITIES ACT:** By signing this Funding Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
- D.5. **AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in Paragraph 12 or take any other action it deems necessary to protect its interests. The Funding Recipient agrees it shall return any audit disallowances to the State.

Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement. If an audit reveals any impropriety, the Bureau of State Audits or the State Controller's Office may conduct a full audit of any or all of the Funding Recipient's activities. (Water Code, § 79708, subd. (b))

- D.6. BUDGET CONTINGENCY: If the Budget Act of the current year covered under this Funding Agreement does not appropriate sufficient funds for this program, this Funding Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient. If funding for any fiscal year after the current year covered by this Funding Agreement 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 Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount.
- D.7. CALIFORNIA CONSERVATION CORPS: Funding Recipient may use the services of the California Conservation Corps or other community conservation corps as defined in Public Resources Code section 14507.5.
- D.8. CEQA: Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State's Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the Department of Water Resources. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. If CEQA compliance by the Funding Recipient is not complete at the time the State signs this Agreement, once State has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the Project; or to not fund the Project. Should the State decide to not fund the Project, this Agreement shall be terminated in accordance with Paragraph 12, "Default Provisions."
- D.9. CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:
- A. The Funding Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.; and
 - B. The Funding Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D.10. CLAIMS DISPUTE: Any claim that the Funding Recipient may have regarding performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the DWR Project Representative, within thirty (30) days of the Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a resolution of

such claim and process an amendment to this Agreement to implement the terms of any such resolution.

- D.11. COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient's contracts with other entities for the acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement must be in writing and shall comply with all applicable laws and regulations regarding the securing of competitive bids and undertaking competitive negotiations. If the Funding Recipient does not have a written policy to award contracts through a competitive bidding or sole source process, the Department of General Services' *State Contracting Manual* rules must be followed and are available at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.
- D.12. COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- D.13. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.
- A. Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - B. Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
 - C. Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act. (Gov. Code, § 87100 et seq.)
 - D. Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
- D.14. DELIVERY OF INFORMATION, REPORTS, AND DATA: Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.15. DISPOSITION OF EQUIPMENT: Funding Recipient shall provide to State, not less than thirty (30) calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within sixty (60) calendar days of receipt of such inventory State shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from

Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.

- D.16. **DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:
- A. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.
 - B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. Funding Recipient's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation, and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
 - C. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:
 - i. Will receive a copy of Funding Recipient's drug-free policy statement, and
 - ii. Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.
- D.17. **EASEMENTS:** Where the Funding Recipient acquires property in fee title or funds improvements to real property already owned in fee by the Funding Recipient using State funds provided through this Funding Agreement, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State. Where the Funding Recipient acquires an easement under this Agreement, the Funding Recipient agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to the new easement owner. Failure to provide an easement acceptable to the State may result in termination of this Agreement.
- D.18. **FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL:** Upon completion of the Project, Funding Recipient shall provide for a final inspection and certification by a California Registered Professional (i.e., Professional Civil Engineer, Engineering Geologist), that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Funding Agreement.
- D.19. **FUNDING RECIPIENT'S RESPONSIBILITIES:** Funding Recipient and its representatives shall:
- A. Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A and in accordance with Exhibits B and C.
 - B. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for funding.
 - C. Comply with all applicable California, federal, and local laws and regulations.
 - D. Implement the Project in accordance with applicable provisions of the law.

- E. Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.
 - F. Obtain any and all permits, licenses, and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Funding Recipient shall provide copies of permits and approvals to State.
 - G. Be solely responsible for design, construction, and operation and maintenance of projects within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Agreement.
 - H. Be solely 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 Funding Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Funding Recipient and any other entity concerning responsibility for performance of work.
- D.20. GOVERNING LAW: This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.21. INCOME RESTRICTIONS: The Funding Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Funding Recipient under this Agreement shall be paid by the Funding Recipient to the State, to the extent that they are properly allocable to costs for which the Funding Recipient has been reimbursed by the State under this Agreement. The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.
- D.22. INDEMNIFICATION: Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
- D.23. INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D.24. INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.
- D.25. INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.

- D.26. **LABOR CODE COMPLIANCE:** The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <https://www.dir.ca.gov/dlse/PWManualCombined.pdf>. The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.
- D.27. **MODIFICATION OF OVERALL WORK PLAN:** At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of Exhibits A, B, and C which concern the budget and schedule without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.
- D.28. **NONDISCRIMINATION:** During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital/domestic partner status, and denial of medical and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated there under (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.
- D.29. **OPINIONS AND DETERMINATIONS:** Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- D.30. **PERFORMANCE BOND:** Where contractors are used, the Funding Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Funding Recipient in the following amounts: faithful performance (100%) of contract value, and labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. Any bond issued pursuant to this paragraph must be issued by a California-admitted surety. (Pub. Contract Code, § 7103; Code Civ. Proc., § 995.311.)
- D.31. **PRIORITY HIRING CONSIDERATIONS:** If this Funding Agreement includes services in excess of \$200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded

by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.

- D.32. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: The Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.
- D.33. PROJECT ACCESS: The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of this Agreement.
- D.34. REMAINING BALANCE: In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State will notify the Grantee stating that the Project file is closed and any remaining balance will be disencumbered and unavailable for further use under this Grant Agreement.
- D.35. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- D.36. RETENTION: The State shall withhold ten percent (10%) of the funds, for each project, until the project is complete, and a Final Project Report is approved and accepted by DWR. If a project has multiple Components (within a project), at the State's discretion and upon a written request by the Grantee, any retained amount attributable to a single component may be released when that component is complete and the Final Component Completion Report is approved. Upon approval of the Final Project Report and/or Final Component Completion Report, any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest.
- D.37. RIGHTS IN DATA: Funding 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 Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act. (Gov. Code, § 6250 et seq.) Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- D.38. SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.
- D.39. SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both if the State determines that:
- A. Funding Recipient, its contractors, or subcontractors have made a false certification, or
 - B. Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.

- D.40. SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D.41. TERMINATION BY FUNDING RECIPIENT: Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date.
- D.42. TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 12, "Default Provisions," the State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Funding Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 12, "Default Provisions."
- D.43. TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on 30 days' advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.44. THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.45. TIMELINESS: Time is of the essence in this Funding Agreement.
- D.46. TRAVEL – DAC, EDA, TRIBES PROJECT: Travel is only an eligible reimbursable expense for projects providing at least 75% of benefits to DACs, EDAs, and/or Tribes (based on population or geographic area). Only ground transportation and lodging are eligible for grant reimbursement. Per diem costs will not be eligible for grant reimbursement. Any reimbursement for necessary travel 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 amounts that are current as of the date costs are incurred. No travel outside of the IRWM region shall be reimbursed unless prior written authorization is obtained from the State.
- D.47. UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:
- A. No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.
 - B. Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.
 - C. Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.
 - D. If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.
- D.48. VENUE: The State and the Funding 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, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.

- D.49. WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

EXHIBIT E
AUTHORIZING RESOLUTION

RESOLUTION 2020-126

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE DESIGNATION OF THE DIRECTOR OF PUBLIC WORKS/CITY ENGINEER AS AUTHORIZED AGENT FOR THE CALIFORNIA DEPARTMENT OF WATER RESOURCES PROPOSITION 1 ROUND 1 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANT AGREEMENT

WHEREAS, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 made funds available through the Round 1 IRWM Implementation Grant funding opportunity; and

WHEREAS, the California Department of Water Resources has been delegated the responsibility for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the Department of Water Resources required a resolution certifying the approval of an application (proposal) by the applicant's governing board before submission of said application; and

WHEREAS, the City of Banning provided such resolutions, certifying the approval of the application (proposal) and appointing the City Manager, or his designee, to act as agent with legal authority to enter into the grant agreement; and

WHEREAS, the California Department of Water Resources provided an Award Notification dated June 9, 2020, indicating the 2019 San Geronio IRWM Implementation Grant Proposal filed by the City of Banning was awarded \$3,537,882 for the Proposition 1 Round 1 IRWM Implementation Grant Solicitation; and

WHEREAS, the City of Banning, as selected, will enter into a Grant Agreement with the Department of Water Resources to carry out the development of the San Geronio IRWM Implementation Grant Proposal; and

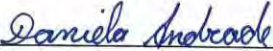
WHEREAS, the Department of Water Resources requires that City Council ratify the City Manager's designation of the Director of Public Works/City Engineer as the Authorized Agent.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Banning as follows:

SECTION 1. The City Council approves the designation by the City Manager for the Director of Public Works/City Engineer to act as Authorized Agent for the Proposition 1 Round 1 IRWM Implementation Grant Agreement on behalf of the City of Banning.

SECTION 2. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 13rd day of October 2020.



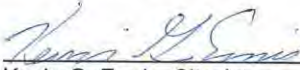
Daniela Andrade, Mayor
City of Banning, California

ATTEST:




Sonja De-La Fuente, Deputy City Clerk
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**



Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

This is a true and exact reproduction of the document officially placed on file in the office of the City City Clerk.



Date Issued: October 15, 2020
Sonja De La Fuente, Deputy City Clerk

EXHIBIT F

REPORT FORMATS AND REQUIREMENTS

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information. For each project, discuss the following at the task level, as organized in Exhibit A:

- Percent complete (by work)
- Discussion of work accomplished during the reporting period.
- Milestones or deliverables completed/submitted during the reporting period.
- Meetings held or attended.
- Scheduling concerns and issues encountered that may delay completion of the task.
- Budget projections for grant share for the next two quarters

For each project, discuss the following at the project level, as organized in Exhibit A:

- Work anticipated for the next reporting period.
- Photo documentation, as appropriate.
- Any schedule or budget modifications approved by DWR during the reporting period.

PROJECT COMPLETION REPORT

The Project Completion Report (or a Component Completion Report, if a Project has multiple Components) shall generally use the following format provided below for each project after completion.

Executive Summary

The Executive Summary should include a brief summary of project information and include the following items:

- Brief description of work proposed to be done in the original Grant application.
- List any official amendments to this Grant Agreement, with a short description of the amendment.

Reports and/or Products

The following items should be provided, unless already submitted as a deliverable:

- A copy of any final technical report or study, produced for or utilized in this Project as described in the Exhibit A
- Electronic copies of any data collected, not previously submitted
- Discussion of problems that occurred during the work and how those problems were resolved
- Final project schedule showing actual progress versus planned progress as shown in Exhibit C

Additional information that may be applicable for implementation projects includes the following:

- Record drawings
- Final geodetic survey information
- Project photos

Cost & Disposition of Funds

A list showing:

- Summary of Project costs including the following items:
 - Accounting of the cost of project expenditure;
 - Include all internal and external costs not previously disclosed (i.e., additional cost share); and
 - A discussion of factors that positively or negatively affected the project cost and any deviation from the original Project cost estimate.

Additional Information

- Benefits derived from the Project, with quantification of such benefits provided.
- If applicable, Certification from a California Registered Professional (Civil Engineer or Geologist, as appropriate), consistent with Exhibit D, that the project was conducted in accordance with the approved Work Plan in Exhibit A and any approved amendments thereto.
- Submittal schedule for the Post-Performance Report.

GRANT COMPLETION REPORT

The Grant Completion Report shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects funded by this Grant Agreement, and includes the following:

- Executive Summary: consisting of a maximum of ten (10) pages summarizing information for the grant as well as the individual projects.
- Brief discussion of: each project completed and how they achieved IRWM Plan objectives and/or Regional goals and whether the level, type, or magnitude of benefits of the project are comparable to the original project proposal; any remaining work to be completed and mechanism for their implementation; the benefits to DAC and/or EDA as part of this Grant Agreement if a DAC or EDA Cost Share Waiver was approved for a project; and a summary of final funds disbursement for each project.

Additional Information: Summary of the submittal schedule for the Post-Performance Reports applicable for the projects in this Grant Agreement.

POST-PERFORMANCE REPORT

The Post-Performance Report (PPR) should be concise and focus on how each project is performing compared to its expected performance; whether the project is being operated and maintained and providing intended benefits as proposed. A PPR template may be provided by the assigned DWR Grant Manager upon request. The PPR should follow the general format of the template and provide requested information as applicable. The following information, at a minimum, shall be provided:

Reports and/or products

- Header including the following:
 - Grantee Name
 - Implementing Agency (if different from Grantee)
 - Grant Agreement Number
 - Project Name
 - Funding grant source (i.e., 2019 Proposition 1 IRWM Implementation Grant)
 - Report number
- Post-Performance Report schedule
- Time period of the annual report (e.g., January 2018 through December 2018)

- Project Description Summary
- Discussion of the project benefits
- An assessment of any differences between the expected versus actual project benefits as stated in the original application. Where applicable, the reporting should include quantitative metrics (e.g., new acre-feet of water produced that year, etc.).
- Summary of any additional costs and/or benefits deriving from the project since its completion, if applicable.
- Any additional information relevant to or generated by the continued operation of the project.

EXHIBIT G

REQUIREMENTS FOR DATA SUBMITTAL

Surface and Groundwater Quality Data:

Groundwater quality and ambient surface water quality monitoring data that include chemical, physical, or biological data shall be submitted to the State as described below, with a narrative description of data submittal activities included in project reports.

Surface water quality monitoring data shall be prepared for submission to the California Environmental Data Exchange Network (CEDEN). The CEDEN data templates are available on the CEDEN website. Inclusion of additional data elements described on the data templates is desirable. Data ready for submission should be uploaded to your CEDEN Regional Data Center via the CEDEN website. CEDEN website: <http://www.ceden.org>.

If a project's Work Plan contains a groundwater ambient monitoring element, groundwater quality monitoring data shall be submitted to the State for inclusion in the State Water Resources Control Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program. Information on the GAMA Program can be obtained at: https://www.waterboards.ca.gov/water_issues/programs/gama/. If further information is required, the Grantee can contact the State Water Resources Control Board (SWRCB) GAMA Program. A listing of SWRCB staff involved in the GAMA program can be found at: https://www.waterboards.ca.gov/water_issues/programs/gama/contact.shtml.

Groundwater Level Data

For each project that collects groundwater level data, the Grantee will need to submit this data to DWR's Water Data Library (WDL), with a narrative description of data submittal activities included in project reports, as described in Exhibit F, "Report Formats and Requirements." Information regarding the WDL and in what format to submit data in can be found at: <http://www.water.ca.gov/waterdatalibrary/>.

EXHIBIT H**STATE AUDIT DOCUMENT REQUIREMENTS FOR THE GRANTEE**

The following provides a list of documents typically required by State Auditors and general guidelines for the Grantee. List of documents pertains to both State funding and the Grantee's Local Cost Share and details the documents/records that State Auditors would need to review in the event of this Grant Agreement is audited. The Grantee should ensure that such records are maintained for each funded project.

State Audit Document RequirementsInternal Controls

1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State funded Program/Project).
2. Written internal procedures and flowcharts for the following:
 - a) Receipts and deposits
 - b) Disbursements
 - c) State reimbursement requests
 - d) Expenditure tracking of State funds
 - e) Guidelines, policy, and procedures on State funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State funded Program/Project.

State Funding:

1. Original Grant Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants, loans, or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related or partners' documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Grant Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related Grant Agreement budget line items.
3. Reimbursement requests submitted to the State for the Grant Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the grants or loans.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Grant Agreement reimbursement.

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on the State funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to the program

Project Files:

1. All supporting documentation maintained in the project files.
2. All Grant Agreement related correspondence.

EXHIBIT I

LOCAL PROJECT SPONSORS AND PROJECT LOCATIONS

The Grantee has assigned, for each project, a Local Project Sponsor (LPS) according to the roles of the participating agencies identified in the IRWM Plan. LPSs may act on behalf of the Grantee for the purposes of individual project management, oversight, compliance, and operations and maintenance. LPSs are identified for each sponsored Project below:

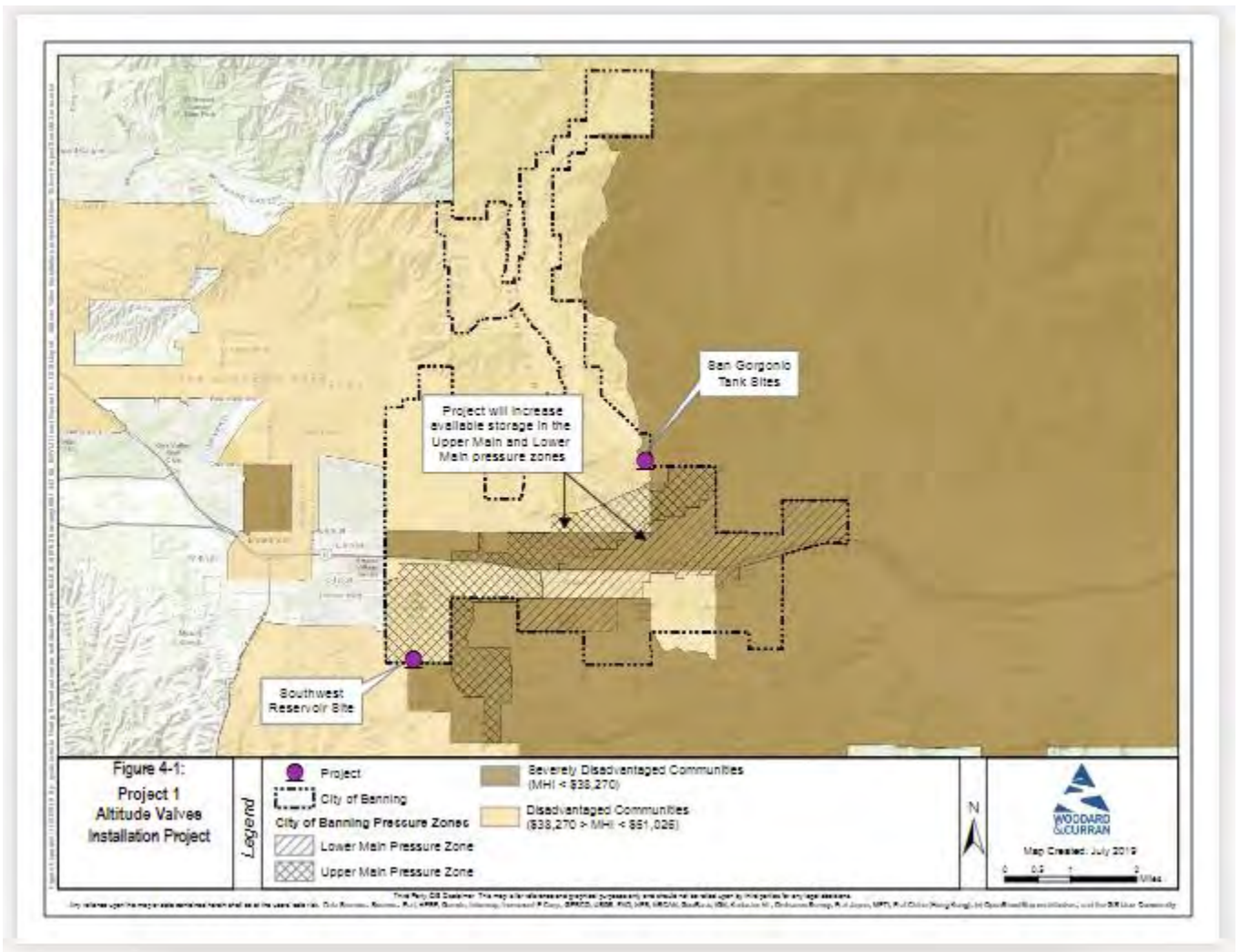
Local Project Sponsor Agency Designation

Sponsored Project: Project 1: Altitude Valves Installation Project

Sponsor Agency: City of Banning

Agency Address: 99 E. Ramsey St, Banning, Ca, 92220

Project Location: San Geronio Tanks Site (San Geronio Reservoirs) & Southwest Reservoir, California (33.93, -116.896667)



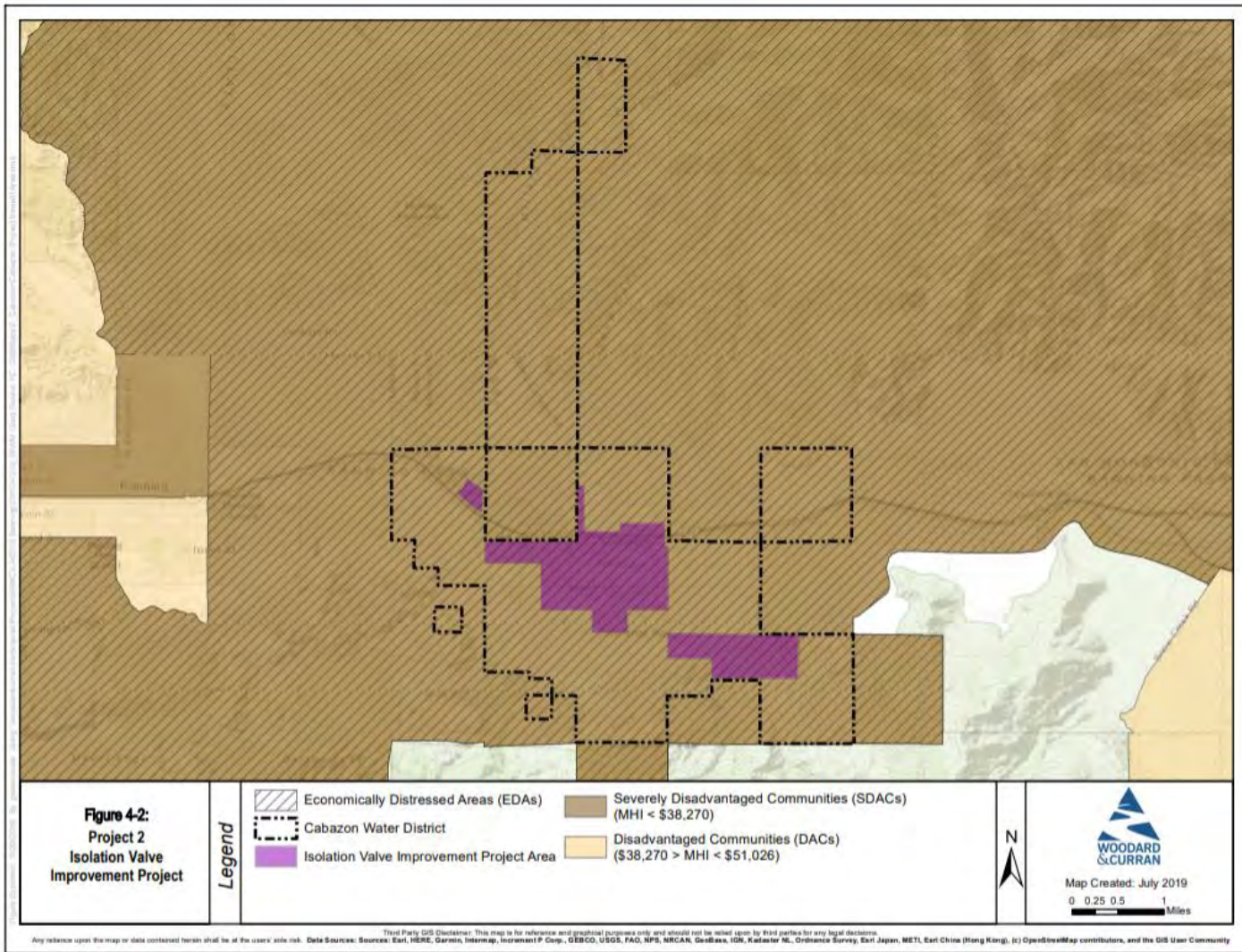
Local Project Sponsor Agency Designation

Sponsored Project: Project 2: Isolation Valve Improvement Project

Sponsor Agency: Cabazon Water District

Agency Address: 14618 Broadway Street, Cabazon, Ca 92230

Project Location: Cabazon Water District service area, California (33.911111, -116.787222)



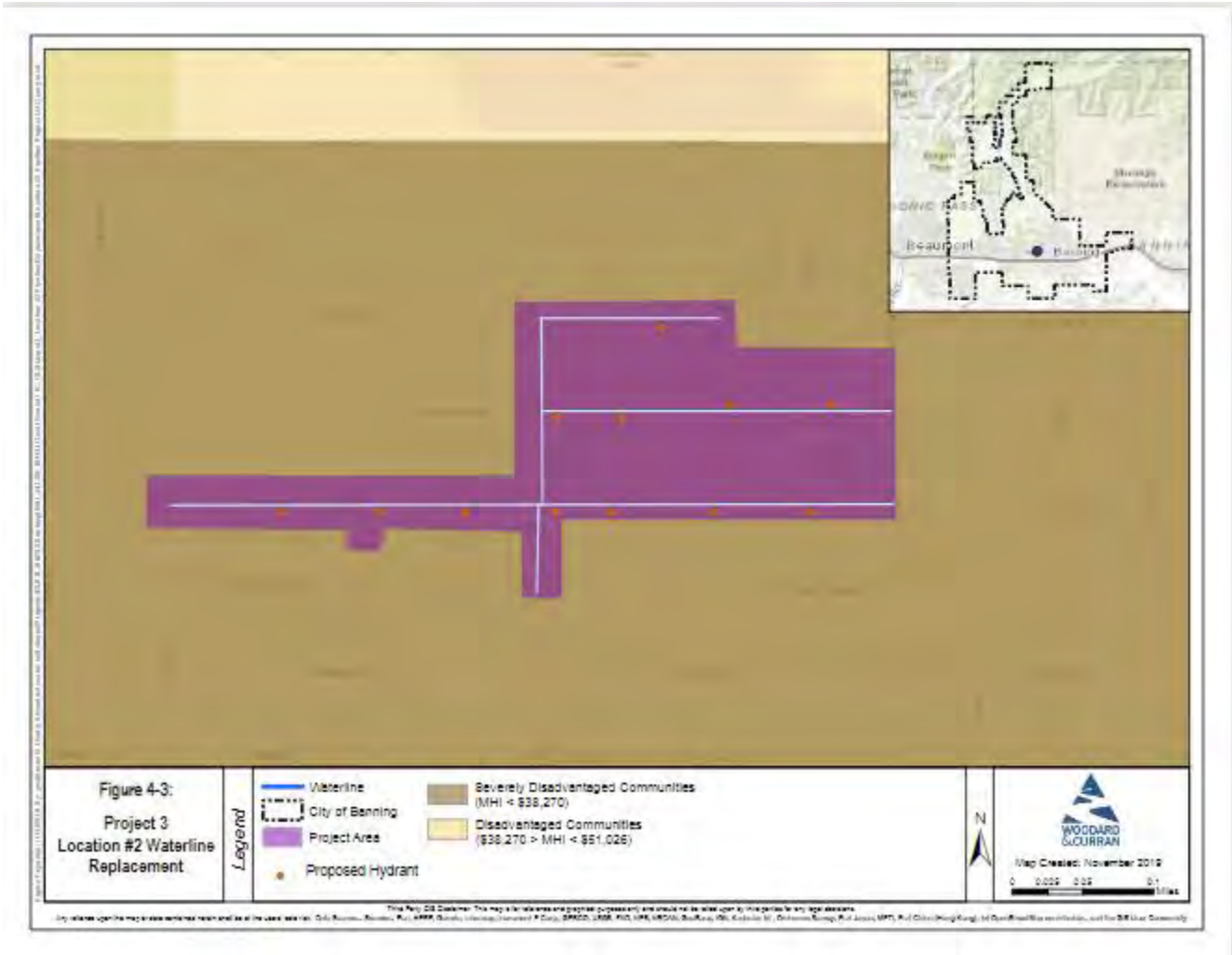
Local Project Sponsor Agency Designation

Sponsored Project: Project 3: Location #2 Waterline Replacement Project

Sponsor Agency: City of Banning

Agency Address: 99 E. Ramsey St, Banning, Ca, 92220

Project Location: Sections of W. George St., Cottonwood Rd., Nicolet St. and 12th St in the City of Banning, California (33.929262, -116.888771)



Local Project Sponsor Agency Designation

Sponsored Project: Project 4: Smart Metering Installation Project

Sponsor Agency: City of Banning

Agency Address: 99 E. Ramsey St, Banning, Ca, 92220

Project Location: City of Banning service area, California (33.553329, -116.523306)

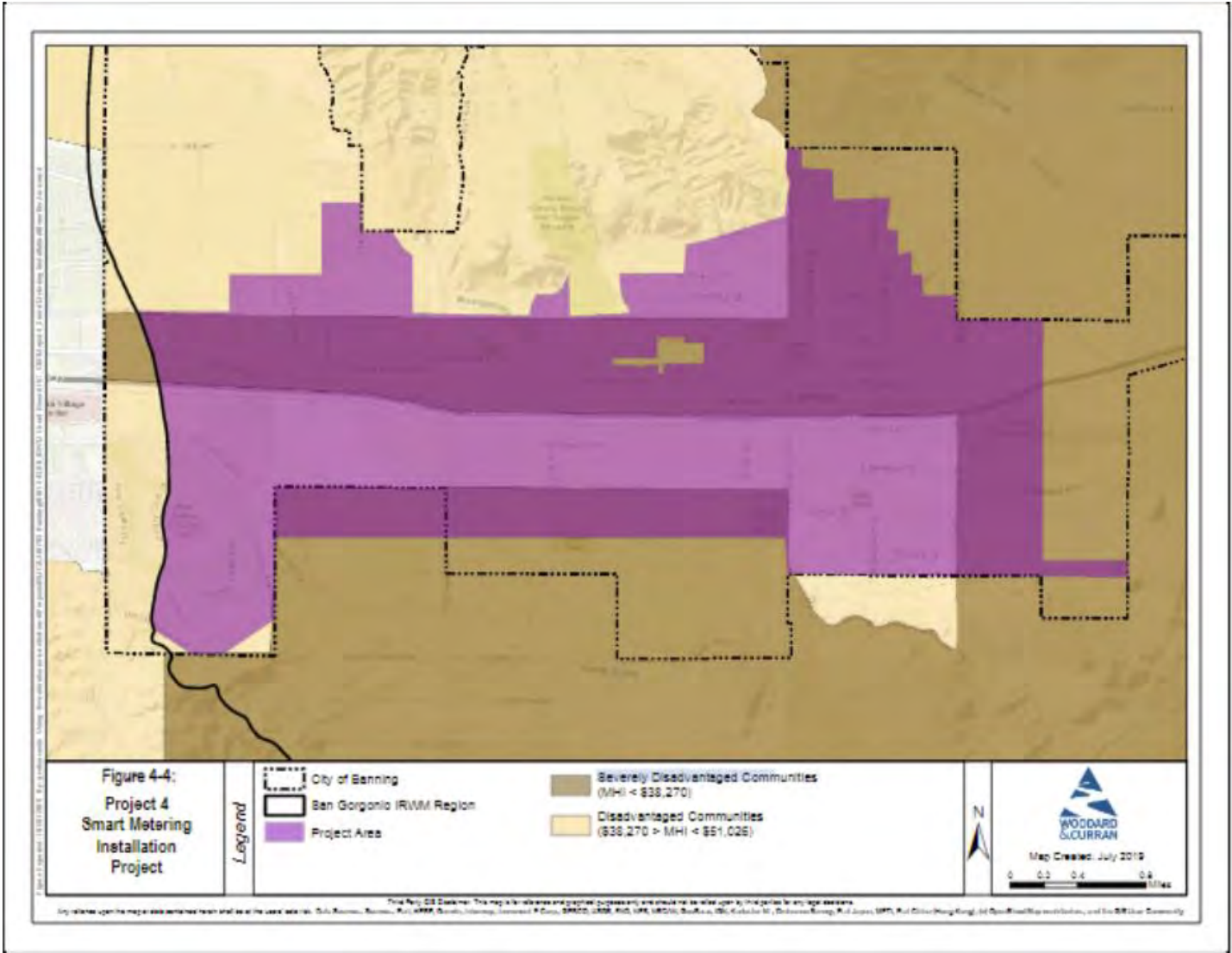


EXHIBIT J

Project Monitoring Plan Guidance

Introduction

For each project contained in Exhibit A, please include a brief description of the project (maximum ~150 words) including project location, implementation elements, need for the project (what problem will the project address) and responds to the requirements listed below.

Project Monitoring Plan Requirements

The Project Monitoring Plan shall contain responses to the following questions:

- What are the anticipated project physical benefits?
- What are the corresponding numeric targets for each project benefit?
- How will proposed numeric targets be measured?
- What are baseline conditions?
- When will the targets be met (e.g., upon project completion, five years after completion)?
- How often will monitoring be undertaken (e.g., monthly, yearly).
- Where are monitoring point locations (e.g., meter located at..., at stream mile...)? Include relevant maps.
- How will the project be maintained (e.g., irrigation, pest management, weed abatement)?
- What will be the frequency and duration of maintenance proposed activities?
- Are there any special environmental considerations (e.g., resource agency requirements, permit requirements, CEQA/NEPA mitigation measures)?
- Who is responsible for collecting the samples (i.e., who is conducting monitoring and/or maintenance)?
- How, and to whom, will monitoring results be reported (e.g., paper reports, online databases, public meetings)?
- What adaptive management strategies will be employed if problems are encountered during routine monitoring or maintenance?
- What is the anticipated life of the project?



DRINKING WATER

CABAZON WATER DISTRICT

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



PLANNING GRANT/PRINCIPAL FORGIVENESS

WELL IMPROVEMENTS PROJECT
PROJECT NO. 3310047-001P

AGREEMENT No. SWRCB0000000000D190203400

PROJECT FUNDING AMOUNT: \$499,000
GRANT COMPONENT: \$457,000
PRINCIPAL FORGIVENESS COMPONENT: \$42,000

ELIGIBLE WORK START DATE: JUNE 1, 2015
WORK COMPLETION DATE: JUNE 1, 2022
FINAL DISBURSEMENT REQUEST DATE: DECEMBER 1, 2022
RECORDS RETENTION END DATE: JUNE 1, 2058

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AGREEMENT

1. AUTHORITY.

(a) The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to

Section 116760 et seq. of the Health and Safety Code, Section 80140 of the Public Resources Code, and Resolution Nos. 2019-0032 and 2019-0065.

(b) The Recipient is authorized to enter into this Grant /Loan Agreement (Agreement) pursuant to Authorized Rep Resolution No. 2015-2.

2. INTENTION.

(a) The Recipient desires to receive financial assistance for and undertake work required for the drinking water planning Project according to the terms and conditions set forth in this Agreement.

(b) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement, with the expectation that the Recipient shall repay none of the financial assistance to the State Water Board.

3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

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

(a) The State Water Board hereby makes a grant to the Recipient in accordance with the provisions of this Agreement.

The State Water Board hereby makes a loan to the Recipient in accordance with the provisions of this Agreement.

(b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following:

(c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Records Retention End Date.

(d) This Agreement includes the following exhibits and attachments thereto:

- i. EXHIBIT A – SCOPE OF WORK
- ii. EXHIBIT B – FUNDING TERMS
- iii. EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS
- iv. EXHIBIT D – SPECIAL CONDITIONS

(e) This Agreement includes the following documents incorporated by reference:

- i. the Drinking Water System Permit No. 05-20-14P-010;
- ii. the Davis-Bacon requirements found at:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/2019_dwsrf_governmental_entities.pdf

4. PARTY CONTACTS

State Water Board		Cabazon Water District	
Section:	Division of Financial Assistance		
Name:	Pete Stamas	Name:	Calvin Louie – General Manager
Address:	1001 I Street, 16 th Floor	Address:	P.O. Box 83
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Cabazon, CA 92230
Phone:	(916) 552-9983	Phone:	(951) 849-4442
Fax:		Fax:	
Email:	Pete.Stamas@waterboards.ca.gov	Email:	clouie@cabazonwater.org

The Recipient may change its contact upon written notice to the Division, which notice shall be accompanied by authorization from the Recipient’s Authorized Representative. The State Water Board will notify the Recipient of any changes to its contact.

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

5. DEFINITIONS.

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

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

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

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

“Cover Page” means the front page of this Agreement.

“Days” means calendar days unless otherwise expressly indicated.

“Deputy Director” means the Deputy Director of the Division.

“District Office” means District Office of the Division of Drinking Water of the State Water Board.

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

“Division of Drinking Water” means the Division of Drinking Water of the State Water Board.

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

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

“Event of Default” means the occurrence of any of the following events:

- a) Failure by the Recipient to make any payment required to be paid pursuant to this Agreement;
- b) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- c) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient’s ability to satisfy its obligations under this Agreement.
- d) Failure to operate the System or the Project without the Division’s approval;
- e) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- f) The occurrence of a material breach or event of default under any System obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- g) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient’s property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient’s entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient’s existence, or any action in furtherance of any of the foregoing;
- h) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code;
- i) Loss of the Recipient’s rights, licenses, permits, or privileges necessary for the operation of the System or the Project, or the occurrence of any material restraint on the Recipient’s enterprise by a government agency or court order.

“Final Disbursement Request Date” means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

“Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year, or any other annual period 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, equipment, or resources for the Project.

“GAAP” means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

“Guidelines” means the State Water Board’s “Proposition 68 Drinking Water Program Funding guidelines,” as set forth in the Intended Use Plan in effect as of the execution date of this Agreement.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

"Material Obligation" means an obligation of the Recipient that is material to this transaction.

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

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

"Project" means the Project financed by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.

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

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy and Guidelines, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, and may include capitalized interest.

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

"Recipient" means Cabazon Water District.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records and is set forth on the Cover Page of this Agreement.

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

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or

investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"SRF" means the Drinking Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

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

"Work Completion Date" means the date set forth on the Cover Page of this Agreement and is the last date on which Project Costs may be incurred under this Agreement.

"Year" means calendar year unless otherwise expressly indicated.

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

CABAZON WATER DISTRICT:

By: 
Name: Calvin Louie
Title: General Manager

Date: 19 MAY 2020

STATE WATER RESOURCES CONTROL BOARD:

By:  , Asst Dep Div
Name: Leslie Laudon
Title: Deputy Director
Division of Financial Assistance

Date: 6/24/20

EXHIBIT A – SCOPE OF WORK

A.1. PROJECT DESCRIPTION AND SCOPE OF WORK.

The objective of the Planning is to address the reduction of source capacity and aging facilities of each of the four existing wells by developing preliminary design documents for a new production well and improvements to existing wells. The Planning will also develop preliminary design documents for the replacement of a 50-year old transmission pipeline crossing Interstate 10.

(a) Scope of Work.

The Recipient agrees to do the following:

ITEM	DESCRIPTIONS
1	Funding Application
	1.1 Prepare and submit application for planning funds from the DWSRF Program. ITEM 1 SUBMITTAL N/A
2	Environmental Documentation
	2.1 Prepare and process necessary California Environmental Quality Act (CEQA) documents in accordance with CEQA Guidelines. The estimated cost for this is based on preparing one combined Initial Study and Mitigated Negative Declaration (IS/MND) for the improvements to existing wells, the new production well, and pipeline replacement. ITEM 2 SUBMITTAL a) Draft CEQA Environmental Documents b) Final CEQA Environmental Documents
3	Test Well
	3.1 Final Design and PS&E for Test Well <ul style="list-style-type: none"> • Prepare final design and contract documents for a test well, including construction plans, specifications, bidding and solicitation documents. The contract documents will include zone testing of the well to identify water quality with respect to depth. • Prepare an engineering cost estimate for construction of the test well. • Obtain easement for the test well, if necessary. 3.2 Drilling of Test Well <ul style="list-style-type: none"> • Oversee drilling of the test well to conduct preliminary yield and water quality testing. • Drilling of the test well will be performed by the contractor selected from the bid solicitation for the new well. The estimated cost is based on the following activities: furnishing and installing a conductor casing, drilling a 1,000 foot deep 12" diameter pilot bore, performing logs (electric logs, gamma log, sonic log, temperature log, and caliper log), performing three (3) isolated aquifer zone tests, performing three

	<p>(3) Title 22 water quality tests, and performing the borehole destruction (after testing is complete).</p> <p>3.3 Prepare a test well report summarizing the findings of the Test Well.</p> <p>ITEM 3 SUBMITTAL</p> <p>a) Final design and contract documents for test well</p> <p>b) Test well drilling report</p>
4	50% Design and Plans, Specifications, and Estimates (PS&E)
	<p>4.1 Prepare 50% design and engineering cost estimates for the proposed well improvements at four existing well sites:</p> <ul style="list-style-type: none"> • Well 1: Replace pumping unit and related electrical equipment. • Well 2: Install new water level measuring access (sounding tube or airline). • Well 4: Replace pumping unit and related electrical equipment and electrical service. • Well 5: Upgrade electrical service and switchgear. <p>4.2 Prepare 50% design and engineering cost estimates for the replacement pipeline.</p> <ul style="list-style-type: none"> • Use outside services for aerial photogrammetry and utility excavation (potholing). • A sub-consultant will prepare a geotechnical investigation to determine soil parameters necessary for the replacement pipeline design. The geotechnical investigation will include seven (7) borings along the proposed alignment. • Perform coordination with Caltrans for the portion of pipeline that crosses Interstate 10 (jack and bore). • Prepare an engineering cost estimate for construction of the replacement pipeline. <p>4.3 If the findings of the test well demonstrate that the location is acceptable for a production well, prepare 50% design and engineering cost estimate for the new production well.</p> <p>ITEM 4 SUBMITTAL</p> <p>a) 50% design and PS&E for existing well improvements</p> <p>b) 50% design and PS&E for the replacement pipeline</p> <p>c) 50% design and PS&E for the new production well (if applicable)</p>

A.2. STANDARD PROJECT REQUIREMENTS.

A.2.1 Acknowledgements.

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

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Drinking 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.2.2 Reports

A.2.2.1 Progress Reports.

(a) The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement.

(b) The Recipient must provide a progress report with each disbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B.

(c) A progress report must contain the following information:

- i. A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- ii. A description of compliance with environmental requirements;
- iii. A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- iv. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.2.2.2 Project Completion Report.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

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

A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

A.3 DATES & DELIVERABLES.

- (a) Time is of the essence.
- (b) The Recipient must expeditiously proceed with and complete the Project.
- (c) The following dates are established as on the Cover Page of this Agreement:
 - i. Eligible Work Start Date
 - ii. Work Completion Date
 - iii. Final Disbursement Request Date
 - iv. Records Retention End Date
- (d) The Recipient must begin work timely.
- (e) The Recipient agrees to start work no later than six months after execution of this Agreement.
- (f) The Recipient must deliver any request for extension of the Work Completion date no less than 90 days prior to the Work Completion date.
- (g) The undisbursed balance of this Agreement will be deobligated if the Recipient does not provide its final Disbursement Request to the Division on or before the Final Disbursement Request Date, unless prior approval has been granted by the Division.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A-3 PLANNING SPECIFIC SCOPE OF WORK			
1	Funding Application N/A	N/A	N/A
2	Environmental Documentation a) Draft CEQA Environmental Documents b) Final CEQA Environmental Documents	N/A N/A	February 1, 2022 June 1, 2022
3	Test Well a) Final design and contract documents for test well b) Test well drilling report	N/A N/A	August 1, 2021 December 1, 2021
4	50% Design Construction Drawings a) 50% design and PS&E for existing well improvements b) 50% design and PS&E for the replacement pipeline c) 50% design and PS&E for the new production well (if applicable)	N/A N/A N/A	November 1, 2021 February 1, 2022 February 1, 2022
EXHIBIT A-5 REPORTING			

(a)	Status Reports	Quarterly	
(b)	As Needed Information or Reports	As Needed	
EXHIBIT B – FUNDING PROVISIONS			
8(b)(1)	Disbursement Requests	As Needed	
3(c)	Final Disbursement Request	December 1, 2022	N/A

EXHIBIT B – FUNDING TERMS

B.1. FUNDING AMOUNTS AND DISBURSEMENTS

B.1.1 Funding Contingency and Other Sources.

(a) If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount.

(b) If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board.

B.1.2 Estimated Reasonable Cost.

The estimated reasonable cost of the total Project is four hundred and ninety-nine thousand, nine hundred and ninety-nine dollars and no cents (\$499,000.00).

B.1.3 Agreement Amount.

Subject to the terms of this Agreement, the State Water Board agrees to provide and forgive Project Funds not to exceed the amount of the Principal Forgiveness Component set forth on the Cover Page of this Agreement.

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Grant Component set forth on the Cover Page of this Agreement.

B.1.4 Reserved.

B.1.5 Budget Costs.

Budget costs are contained in the Project Cost Table below:

ITEM	DESCRIPTION	AMOUNT
1	Funding Application	\$42,000
2	Environmental Documentation	\$50,000
3	Test Well	\$264,000
4	50% Design Construction Drawings*	\$143,000
	TOTAL	\$499,000

* The Recipient estimates final design and PS&E to cost approximately \$228,000 (an additional \$85,000) for a total estimated planning cost of \$584,000 for the Project. Because the maximum grant for planning projects per the DWSRF Intended Use Plan is \$500,000, the final PS&E will be completed as part of the Recipient's construction project.

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.1.6 Contingent Disbursement.

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

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

(c) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.

(d) Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.

(e) The Recipient agrees to ensure that its final Disbursement Request is received by the Division no later than the Final Disbursement Request Date, unless prior approval has been granted by the Division. If the final Disbursement Request is not received timely, the undisbursed balance of this Agreement will be deobligated.

(f) The Recipient is not entitled to interest earned on undisbursed funds

B.1.7 Disbursement Procedure.

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

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate disbursement of any eligible incurred costs as specified below from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
4. The Recipient must not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of 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 Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Disbursement Request.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future disbursements.
6. The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
8. No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. as of the date costs are incurred by the Recipient.

B.1.8 Withholding of Disbursements.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- (a) The Recipient's failure to maintain reasonable progress on the Project as determined by the Division;
- (b) Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System;
- (c) Commencement of litigation or a judicial or administrative proceeding related to the Project, System, or Revenues that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- (d) Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) A material adverse change in the condition of the Recipient, the Revenues, or the System, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
- (f) The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
- (g) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents regarding the Project or the System;
- (h) An event requiring Notice as set forth in Exhibit C;
- (i) An Event of Default or an event that the Division determines may become an Event of Default.

B.1.9 Fraud and Misuse of Public Funds.

All requests for disbursement submitted must be accurate and signed by the Recipient's Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the repayment of all Project Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

B.2 RECIPIENT'S PAYMENT OBLIGATION

B.2.1 Project Costs.

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

B.2.2 Estimated Principal Payment Due.

The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is Zero dollars and no cents (\$0.00).

B.3 RATES, FEES AND CHARGES.

(a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement.

(b) 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.

B.4 NO LIENS.

The Recipient must not make any pledge of or place any lien on the Project, System, or Revenues except upon consent of the Division.

EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS

C.1 REPRESENTATIONS & WARRANTIES.

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

C.1.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

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

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

C.1.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

C.1.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

C.1.4 No Litigation.

There are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain the System or any of the real or personal property related to or necessary for the Project.

C.1.5 Reserved.

C.1.6 Solvency and Insurance.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.

C.1.7 Legal Status and Eligibility.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

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

C.1.9 Reserved.

C.1.10 No Other Material Debt.

The Recipient has no Material Obligations other than those set forth in Exhibit D.

C.1.11 Reserved.

C.2 DEFAULTS AND REMEDIES

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

C.2.1 Return of Funds; Acceleration; Additional Payments; and Cross-Defaults.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, immediately to do each of the following:

- i. return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- ii. accelerate the payment of any principal owed under this Agreement, all of which shall be immediately due and payable;
- iii. pay interest at the highest legal rate on all of the foregoing; and
- iv. pay any Additional Payments.

C.2.2 Reserved.

C.2.3 Judicial remedies.

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

- i. by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- ii. by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement, including but not limited to the imposition and collection of rates for the services of the System sufficient to meet all requirements of this Agreement; and
- iii. take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

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

C.2.4 Termination.

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

C.2.5 Damages for Breach of Tax-Exempt Status.

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

C.2.6 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C.2.7 Remedies and Limitations.

None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy.

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

C.2.8 Non-Waiver.

Nothing in this Agreement shall affect or impair the Recipient's obligation to undertake work under this Agreement or shall affect or impair the right of the State Water Board to bring suit to enforce such work. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement.

C.2.9 Status Quo.

If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights and remedies as if no such action had been brought.

C.3 STANDARD CONDITIONS

C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times for the term of the Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, disbursement requests, and supporting documentation submitted hereunder.

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

(a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

(b) The Recipient must 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 government and tracking of Project 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 is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

(c) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- i. Establish an official file for the Project which adequately documents all significant actions relative to the Project;
- ii. Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- iii. Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- iv. Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
- v. 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
- vi. If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Costs from Force Account are not eligible for funding.

(d) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Work Completion. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

C.3.3 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

Requests for amendments must be in writing and directed to the contact listed in Section 4 and to the Division's Chief of Loans and Grants Administration Section.

C.3.4 Assignability.

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

C.3.5 Audit.

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

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

C.3.6 Bonding.

Where contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

C.3.7 Competitive Bidding

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

C.3.8 Compliance with Applicable Laws, Rules, and Requirements.

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

(a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;

(b) Comply with the Policy and Guidelines; and

(c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

C.3.9 Computer Software.

The Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

C.3.10 Conflict of Interest.

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

C.3.11 Reserved.

C.3.12 Data Management.

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

C.3.13 Disputes.

(a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

(b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

(c) Recipient must continue with the responsibilities under this Agreement during any dispute.

(d) This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

C.3.14 Drug-Free Workplace.

The Recipient certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act (Gov. Code. §§ 8350-8357). The Recipient shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions to be taken against employees for violations of the prohibition. The Recipient shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations. The Recipient shall provide that every employee who works on the Project receives a copy of the Recipient's drug-free workplace policy statement and agrees to abide by the terms of the statement as a condition of employment on the Project.

C.3.15 Environmental Clearance.

(a) Notwithstanding any other provision, the State Water Board has no binding obligation to provide funding under this Agreement except for activities excluded from, not subject to, or exempt under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). No work that is subject to CEQA or NEPA may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement.

(b) If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the

impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

C.3.16 Governing Law.

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

C.3.17 Income Restrictions.

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

C.3.18 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System or the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Parties in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.

C.3.19 Independent Actor.

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

C.3.20 Integration.

This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

C.3.21 Reserved.

C.3.22 No Discrimination.

(a) The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.

(b) If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.

(c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).

(d) The Recipient's obligations under this section shall survive the term of this Agreement.

(e) During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

(f) The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(g) The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(h) The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

C.3.23 No Third Party Rights.

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

C.3.24 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.

C.3.25 Notice.

Upon the occurrence of any of the following events, the Recipient must provide notice as set forth below.

- (a) Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to Pete.Stamas@waterboards.ca.gov; Bridget.Chase@waterboards.ca.gov and DrinkingWaterSRF@waterboards.ca.gov:
 - i. Any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.

- (b) Within five (5) business days, the Recipient must notify the Division by phone at (916) 327-9978; by email to Lance.Reese@waterboards.ca.gov; Pete.Stamas@waterboards.ca.gov; Bridget.Chase@waterboards.ca.gov and DrinkingWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth in Section 4 of this Agreement of the occurrence of any of the following events:
 - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project or the System or change of management or service contracts, if any, for operation of the System;
 - iii. Loss, theft, damage, or impairment to Project, the Revenues or the System;
 - iv. Events of Default, except as otherwise set forth in this section;
 - v. Failure to observe or perform any covenant or comply with any condition in this Agreement.
 - vi. An offer from a public entity to purchase the Project or the System or any portion thereof, or any of the real or personal property related to or necessary for the Project;
 - vii. A proceeding or action by a public entity to acquire the Project or the System by power of eminent domain;

- (c) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to Pete.Stamas@waterboards.ca.gov; Bridget.Chase@waterboards.ca.gov and DrinkingWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of the following events:
 - i. Material defaults on Material Obligations;

- ii. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence,
 - iii. Circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System,
 - iv. Consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
 - v. Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds; or
 - vi. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- (d) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to Pete.Stamas@waterboards.ca.gov; Bridget.Chase@waterboards.ca.gov and DrinkingWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of any of the following events:
- i. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - ii. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - iii. 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;
 - iv. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
 - v. Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
 - vi. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
 - vii. Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, as required by Exhibit C.4.3(xxvii).
 - viii. Any events requiring notice to the Division pursuant to the provisions of this Agreement;
 - ix. Work Completion, and actual Project Completion;

C.3.26 Reserved.

C.3.27 Permits, Subcontracting, and Remedies.

Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at

http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml

C.3.28 Professionals.

The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

C.3.29 Prevailing Wages.

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

In addition, the Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in Section 3 of this Agreement.

C.3.30 Public Funding.

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

C.3.31 Recipient's Responsibility for Work.

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

C.3.32 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

C.3.33 Rights in Data.

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

C.3.34 State Water Board Action; Costs and Attorney Fees.

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

C.3.35 Timeliness.

Time is of the essence in this Agreement.

C.3.36 Unenforceable Provision.

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

C.3.37 Venue.

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

C.3.38 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

C.4.1 Reserved.

C.4.2 State Cross-Cutters.

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

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

C.4.3 Federal Requirements and Cross-Cutters.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions:

- i. 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.

- ii. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.
- iii. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- iv. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- v. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- vi. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- vii. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- viii. 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.
- ix. 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.
- x. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- xi. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xii. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, 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. 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 if the Recipient that is a private entity is determined to have violated the foregoing.

- xiii. The Recipient certifies to the best of its knowledge and belief that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

- xiv. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing.
- xv. If the Project relates to construction of a publicly owned treatment works, 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.
- xvi. If the Project relates to construction of a publicly owned treatment works, the Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, 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 the Project and a plan for funding such activities.

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

"During the performance of this contract, the contractor agrees as follows:"(a) 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.

"(b) 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.

"(c) 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.

"(d) 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.

"(e) 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.

"(f) 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.

"(g) 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."

- xviii. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises as set forth in Exhibit A.
- xix. 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 excluded under the federal System for Award Management: <http://www.sam.gov/>.
- xx. 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.
- xxi. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxii. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxiii. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxiv. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxv. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxvi. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and

disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- xxvii. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.

EXHIBIT D – SPECIAL CONDITIONS

Technical:

1. Recipient shall not solicit bids, award a contract, or commence drilling of any test wells prior to receiving written authorization from the Division.
2. Recipient shall obtain approval from the Division to proceed with the development of environmental and design documents for the new production well, the existing well pumping plant improvements, and the replacement pipeline.

Environmental:

1. Recipient shall submit all final California Environmental Quality Act (CEQA) documents and notices for the Selected Construction Project to the Governor's Office of Planning and Research, State Clearinghouse. A copy of all such CEQA documents and notices shall be sent to the Division.

Governor's Office of
Planning and Research
1400 Tenth Street
Sacramento, CA 95814

State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 16th Floor
Sacramento, CA 95814

2. During the Term of this Agreement, Recipient shall request approval of any change(s) to the Scope of Work. Thereafter, the Division shall notify Recipient whether additional environmental review is necessary as a result of the change(s).
3. Recipient shall not initiate construction activities unless and until the environmental review process is complete and all applicable notices are filed by the Recipient in its capacity as the CEQA Lead Agency.