

Cooperative Agreement for Implementation of the Sonoma-Mendocino Immediate Drought Relief Project

This agreement (“Agreement”) is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California (“Water Agency”) and **City of Santa Rosa**, a government agency (“City”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Article 8 (Term of Agreement).

RECITALS

- A. California recently experienced a significant drought that has reduced water storage levels to unprecedented low levels and caused critical water shortages in some communities in Sonoma and Mendocino Counties. The Sonoma-Mendocino Immediate Drought Relief Project (Project) offers immediate drought relief and long-term water savings. The Project will increase water use efficiency and increase drought resilience in the region for years to come and is in part a response to the Governor’s emergency drought declaration that set a 20 percent water demand reduction goal. The Project will reduce demand for water from Lake Mendocino and from local groundwater supplies and launch a scalable water conservation program in areas affected by the drought that have not historically implemented water conservation programs by providing incentives directly to customers.
- B. This Project is financed under Proposition 84 (The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006) Integrated Regional Water Management (IRWM) Grant Program, administered by the California Department of Water Resources (DWR) through the County of Humboldt. The Project was one of twelve projects funded through the North Coast Resource Partnership.
- C. The grant will fund Best Management Practices including a turf conversion rebate program to convert high-water-using landscaping (turf) to climate appropriate landscaping (low water-use plants).
- D. The participating entities are committed to water use efficiency to ensure adequate water supply during future drought periods.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
- a. Exhibit A: Program Scope
 - b. Exhibit B: Schedule of Reimbursable Program Costs
 - c. Exhibit B-1: Amended Schedule of Reimbursable Program Costs
 - d. Exhibit C: Insurance Requirements
 - e. Exhibit D: Grant Award Documents for FP-00068 (Section D - Standard Conditions from Grant Agreement No. 4600010890)
 - f. Exhibit E: Quarterly Reporting Form

3. DEFINITIONS:

- 3.1. For the purposes of this Agreement, the following terms and definitions shall be used:
- a. Participants. City-approved water customers who apply to participate in Program Measures as described in Exhibit A.
 - b. Grant-Funded Measures. Water conservation incentives described in Exhibit A that are funded by Department of Water Resources Proposition 84 grant.
 - i. City-run Programs. Grant Funded Measures in Exhibit A that the City will implement.
 - ii. Water Agency-run Programs. Grant Funded Measures in Exhibit A that the Water Agency will implement on behalf of the City.

4. CITY'S RESPONSIBILITES

- 4.1. *City's Specified Scope of Work:* City shall perform the tasks in Exhibit A (Program Scope), within the times or by the dates provided for in Exhibit A. In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.
- 4.2. *Match Funds:* Grant terms require City to provide match funding in the amount listed in Exhibit B. Match expenses must be incurred after January 1, 2014.
- 4.3. *Quarterly Reports:* City shall provide quarterly reports of the in-kind services performed, in a format provided by Water Agency, (attached as Exhibit E). Reports shall be submitted to Water Agency on or before the first day of the months of April, July, October, and January.
- 4.4. *Communication:* City shall provide regular communication monthly via email or phone with Water Agency Representative on budget tracking and other issues as required.
- 4.5. *Program Monitoring:* City shall provide access to work sites, records, programs or procedures in order to ensure compliance with terms and conditions of the Grant agreement.

4.6. *State or Grant Funding:* City is informed and aware that this Agreement is funded by a grant from the California Department of Water Resources (State) Proposition 84 Integrated Regional Water Management Implementation Grant Agreement No. 4600010890, which grant is conditioned upon various terms that apply to City. City has reviewed the grant award documents attached hereto as Exhibit D (Grant Award Documents) and hereby agrees to comply with them to the extent they apply to a subrecipient.

5. WATER AGENCY'S RESPONSIBILITIES

- 5.1. *Coordination and Grant Administration:* Water Agency shall coordinate, document, invoice, and report as required by the grant terms, including the Programs described in Exhibit A.
- 5.2. Water Agency shall submit quarterly invoices for these services to City
- 5.3. *Disbursement of Grant Funds:* Water Agency shall disburse funds per grant guidelines.

6. COORDINATION

6.1. *Coordination:* City shall cooperate with Water Agency in the performance of all work hereunder. City shall coordinate the work with Water Agency’s Project Manager. Contact information and mailing addresses:

Water Agency	City
Project Manager: Brian Lee Phone: (707) 547-1918 Email: brian.lee@scwa.ca.gov Grant Manager: Joan Hultberg Phone: 707-547-1902 Email: joan.hultberg@scwa.ca.gov 404 Aviation Boulevard Santa Rosa, CA 95403-9019	Contact: Sean McNeil Phone: (707) 543-3938 Email: smcneil@srcity.org 69 Stony Circle Santa Rosa, CA 95401
<p style="text-align: center;">Remit invoices to:</p> Susan Bookmyer Same address as above or Email: susan.bookmyer@scwa.ca.gov <p style="text-align: center;">Remit payments to:</p> Justin Adalio Same address as above Email: justin.adalio@scwa.ca.gov	<p style="text-align: center;">Remit payments to:</p> Same address as above <p style="text-align: center;">Remit invoices to:</p> Same address as above

7. PAYMENT

- 7.1. *Program Maximum Obligations:* City's obligation under this Agreement shall not exceed the amount listed in Exhibit B. Water Agency anticipates receiving a maximum of \$286,196 in grant funding.
- a. *Water Agency-run Programs:* Estimated amount for Water Agency-run Programs: \$0.
 - b. *City-run Programs:* Estimated amount for City-run Programs: \$422,480.
 - c. *Estimated Amounts:* Estimated amounts in Paragraphs 7.1.a and 7.1.b may be adjusted, as mutually agreed in writing by the parties using the Amended Schedule of Costs (Exhibit B-1), provided total cost does not exceed \$422,480.
- 7.2. *Method of Payment:* City shall be paid in accordance with the following terms:
- a. City shall be paid in accordance with Exhibit B (Schedule of Reimbursable Program Costs). Labor rates for staff time will be reimbursed at the rates eligible under the grant. Expenses not expressly authorized by the Agreement shall not be reimbursed.
 - b. City shall not be entitled to any additional payment for any expenses incurred in completion of the services.
 - c. City will be reimbursed for Program expenditures when grant funds become available. Water Agency will distribute payments to City according to grant guidelines. (Total match funds required by Program must be reported before grant funding is disbursed.)
- 7.3. *Invoices:* City shall submit its bills in arrears on a quarterly basis, based on work completed for the prior period.
- 7.4. *Quarterly Reports with Invoices:* Payment of invoices is subject to receipt of quarterly reports; format provided in Exhibit E.
- 7.5. *Excess Costs:* If the Program costs exceed the total amount described in this Agreement for City-run Programs, City shall pay for materials and services. Excess costs will be reported as additional matching funds for the grant and are not eligible for additional grant reimbursement.

8. TERM OF AGREEMENT

- 8.1. The term of this Agreement shall commence on January 17, 2014 ("Effective Date") and end on June 30, 2022, unless terminated earlier in accordance with the provisions of Article 9 (Termination).

9. **TERMINATION**

- 9.1. *Authority to Terminate:* Water Agency's right to terminate may be exercised by Water Agency's General Manager.
- 9.2. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should City fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Water Agency may immediately terminate this Agreement by giving City written notice of such termination, stating the reason for termination.
- 9.3. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, City shall, within 14 days following the date of termination, deliver to Water Agency all reports, and other data or documents, in whatever form or format, assembled or prepared by City or City's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.10 and shall submit to Water Agency an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 9.4. *Payment Upon Termination:* Upon termination of this Agreement by Water Agency, City shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by City bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then City shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate. and further provided, however, that if Water Agency terminates the Agreement for cause pursuant to Paragraph 9.2, Water Agency shall deduct from such amounts the amount of damage, if any, sustained by Water Agency by virtue of the breach of the Agreement by City.
- 9.5. *Termination for Non-Appropriation:* Water Agency may terminate this Agreement at any time, upon giving City thirty (30) days written notice, for any of the following reasons:
- a. Water Agency has exhausted all funds legally available for payments to become due under this Agreement;
 - b. Funds which have been appropriated for purposes of this Agreement are withheld and are not made available to Water Agency;
- 9.6. *Change in Funding:* City understands and agrees that Water Agency shall have the right to terminate this Agreement immediately upon written notice to City in the event that (1) any state or federal agency or other funder reduces, withholds or terminates funding which the Water Agency anticipated using to pay City for

services provided under this Agreement or (2) Water Agency has exhausted all funds legally available for payments due under this Agreement.

10. INDEMNIFICATION

10.1. City agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency and the State of California, and to indemnify, hold harmless, and release Sonoma County Water Agency and the State of California, their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, that arise out of, pertain to, or relate to City's or its agents', employees', contractors', subcontractors', or performance or obligations under this Agreement. City agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency or the State of California based upon a claim relating to City's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. City's obligations under this Article 10 apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency or the State of California, but, excluding liability due to conduct of Sonoma County Water Agency or the State of California. Sonoma County Water Agency and the State of California shall have the right to select their legal counsel at City's expense, subject to City's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for City or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

11. INSURANCE

11.1. With respect to performance of work under this Agreement, City shall maintain and shall require all of its subcontractors, consultants, to maintain, insurance as described in Exhibit C (Insurance Requirements).

12. EXTRA OR CHANGED WORK

12.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. The parties expressly recognize that Water Agency personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of City to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter City shall be entitled to no compensation whatsoever for the performance of such work. City further expressly waives any and all right or remedy by way of restitution

and quantum meruit for any and all extra work performed without such express and prior written authorization of Water Agency.

- 12.2. *Labor Code Compliance*: City shall keep informed of and take all measures necessary to ensure compliance with applicable Labor Code requirements, including, but not limited to, §1720 et seq. of the Labor Code regarding public works, limitations on use of volunteer labor (Labor Code §1720.4), labor compliance programs (Labor Code §1771.5) and payment of prevailing wages for work done and funded pursuant to these Labor Code, including any payments to the Department of Industrial Relations under Labor Code §1771.3.
- 12.3. *Nondiscrimination*: During the performance of this Agreement, City and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, 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 status, and denial of medial and family care leave or pregnancy disability leave. City and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. City and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, §7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- 12.4. *Workers' Compensation*: Consultant affirms that it is aware of the provisions of §3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant 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.
- 12.5. *No Suspension or Debarment*: City warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. City also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.

- 12.6. *Accounting, Audits, and Records Maintenance:* City shall 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 Water Agency and State at any and all reasonable times. All records of City or its subcontractor shall be preserved for the purpose of State audits for at least three (3) years after project completion or final billing, whichever comes later.
- 12.7. *Inspections:* Water Agency and State shall have the right to inspect the work being performed at any and all reasonable times, providing a minimum of 24-hour notice, during the term of this Agreement. City acknowledges that Program documents may be subject to the Public Records Act (California Government Code Section 6250 et. seq.). Water Agency and State shall have the right to inspect these documents at any and all reasonable times after completion of the Program to ensure compliance with the terms and conditions of this Agreement. During regular office hours, Water Agency and State shall have the right to inspect and to make copies of any books, records, or reports of the City relating to this Grant Agreement. City shall maintain and shall make available at all times for such inspection accurate records of its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by City to comply with this provision shall be considered a breach of this Grant Agreement, and Water Agency may withhold disbursements to City or take any other action it deems necessary to protect its interests.
- 12.8. *Nondiscrimination:* City shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.9. *Drug-Free Workplace Certification (Certification of Compliance):* By signing this Agreement, City, its 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 (Government 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(a)(1).
 - b. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. City'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(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement:
- i. Will receive a copy of City's drug-free policy statement, and
 - ii. Will agree to abide by terms of City's condition of employment, contract or subcontract.

12.10. *Ownership of Work Product:* All reports, drawings, graphics, plans, and studies, in their final form and format, assembled or prepared by City or City's subcontractors, and consultants, in connection with this Agreement, shall be the property of Water Agency. City shall deliver such materials to Water Agency upon request in their final form and format. Such materials shall be and will remain the property of Water Agency without restriction or limitation. Document drafts, notes, and emails of City and City's subcontractors, and consultants shall remain the property of those persons or entities.

13. DEMAND FOR ASSURANCE

13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits Water Agency's right to terminate this Agreement pursuant to Article 9 (Termination).

14. ASSIGNMENT AND DELEGATION

14.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

- 14.2. *Subcontracts*: Notwithstanding the foregoing, City may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 14.3. *Change of Subcontractors or Subconsultants*: If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, City may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 14.2. The following provisions apply to any subcontract entered into by City other than those listed in Paragraph 14.2 above:
- a. Prior to entering into any contract with subconsultant, City shall obtain Water Agency approval of subconsultant. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Water Agency and the State of California in substantially the same form as that contained in Article 10, (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.
- 14.4. *Summary of Subconsultants' Work*: City shall provide Water Agency with a copy of subconsultant contract and summary of work performed by subconsultants with each invoice submitted under Paragraph 7.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

15. MISCELLANEOUS PROVISIONS

- 15.1. *No Bottled Water*: In accordance with Water Agency Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Water Agency funding shall be used to purchase single-serving, disposable water bottles for use in Water Agency facilities or at Water Agency-sponsored events. This restriction shall not apply when potable water is not available.
- 15.2. *No Waiver of Breach*: The waiver by Water Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 15.3. *Construction*: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. City and Water Agency acknowledge

that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and Water Agency acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- 15.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 15.5. *No Third-Party Beneficiaries:* Except as provided in Article 10 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 15.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the city of Santa Rosa, in the County of Sonoma.
- 15.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 15.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 15.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 15.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

TW 18/19-022

Reviewed as to funds:

By: _____
Water Agency Division Manager -
Administrative Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Approved as to form by City Attorney:

By: _____
City Attorney

Insurance Documentation is on file with
Water Agency

Date/TW Initials: _____

Sonoma County Water Agency

City of Santa Rosa

By: _____
Grant Davis, General Manager

By: _____
Daniel Galvin III, Chair, Board of Public
Utilities

Date: _____

Date: _____

Attest:

By: _____
Board of Public Utilities Recording Secretary

Exhibit A

Program Scope

GRANT FUNDED MEASURES: CITY RUN PROGRAMS

- A. *Turf Replacement Rebate Program*: City will implement a turf conversion program providing incentives for converting turf to low water use plant material. The program will follow the guidelines below:
- 1) City will pay Participants a minimum of \$0.50/sq. ft. rebate for converting high water use turf. The maximum rebate will be \$5,000 for commercial participants and \$250 for residential participants.
 - 2) Grant will fund \$0.33871/sq. ft. per square foot removed. City will provide a minimum of \$0.16129/sq. ft. in match.
- B. *Deliverables*
- 1) Quarterly reports to project manager.

Exhibit B

Schedule of Reimbursable Program Costs

Grant-Funded Measure	Minimum Participant rebate rate	Eligible Quantity	Grant Funds available	Match Obligation	Reimbursement Rate
Turf Replacement Rebate Program	\$0.50/sq ft	844,960 sq ft	\$286,196	\$136,284	\$0.33871/sq ft
Total Available Funding			\$286,196	\$136,284	

Note: Additional funds may become available if other entities do not use allocated amounts. Amount of funding and eligible quantities may be modified by using Exhibit B-1- Amended Schedule of Reimbursable Program Costs

Exhibit B-1

Amended Schedule of Reimbursable Program Costs for Agreement 18/19-022

Grant-Funded Measure	Participant rebate rate	Eligible Quantity	Grant Funds available	Match Obligation	Reimbursement Rate
Turf Replacement Rebate Program	\$0.50/sq ft				\$0.33871/sq ft
Total Available Funding			\$	\$	

Water Agency and City mutually agree that quantities and dollar amounts listed above will replace any earlier version of Exhibit B. All conditions of the Agreement other than those specifically changed by this amended Exhibit shall remain in effect.

City of Santa Rosa

Sonoma County Water Agency

By: _____

Reviewed by:

Title: _____

By: _____

Carrie Pollard, Program Manager

Date: _____

By: _____

Joan Hultberg, Grant Manager

Water Agency copies to:

Accounting and Records

Joan Hultberg

Jennifer Chong

Jennifer Willits

Date: _____

Exhibit C

Insurance Requirements

1. **INSURANCE TO BE MAINTAINED BY CITY OF SANTA ROSA**

City of Santa Rosa shall maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. The insurance shall be maintained for the entire term of the Agreement.

Water Agency reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Water Agency's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or Water Agency's failure to identify any insurance deficiency shall not relieve City of Santa Rosa from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

- 1.1. Workers Compensation and Employers Liability Insurance
 - a. Required if City of Santa Rosa has employees as defined by the Labor Code of the State of California.
 - b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
 - c. Employers' Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
 - d. Required Evidence of Insurance: Certificate of Insurance
 - e. If City of Santa Rosa currently has no employees as defined by the Labor Code of the State of California, City of Santa Rosa agrees to obtain the above-specified Workers' Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.
- 1.2. General Liability Insurance
 - a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
 - b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If City of Santa Rosa maintains higher limits than the specified minimum limits, Water Agency requires and shall be entitled to coverage for the higher limits maintained by City of Santa Rosa.
 - c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it

must be approved in advance by Water Agency. City of Santa Rosa is responsible for any deductible or self-insured retention and shall fund it upon Water Agency's written request, regardless of whether City of Santa Rosa has a claim against the insurance or is named as a party in any action involving the Water Agency.

- d. Sonoma County Water Agency, the State of California, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of City of Santa Rosa's ongoing operations. (ISO endorsement CG 20 26 or equivalent).
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between Water Agency and City of Santa Rosa and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned vehicles if City of Santa Rosa owns vehicles.
- c. Insurance shall cover hired and non-owned vehicles.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.5. Documentation

- a. The Certificate of Insurance must include the following reference: TW 18/19-022.
- b. City of Santa Rosa shall submit required Evidence of Insurance prior to the execution of this Agreement. City of Santa Rosa agrees to maintain current Evidence of Insurance on file with Water Agency for the required period of insurance.

- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. City of Santa Rosa shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.6. Policy Obligations

- a. City of Santa Rosa's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Exhibit D

Grant Award Documents

EXHIBIT D
STANDARD CONDITIONS

D.1) ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- a) **Separate Accounting of Funding Disbursements and Interest Records:** Grantee shall account for the money disbursed pursuant to this Grant Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Grantee 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) **Fiscal Management Systems and Accounting Standards:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Grant Agreement.
- c) **Disposition of Money Disbursed:** All money disbursed pursuant to this Grant Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- d) **Remittance of Unexpended Funds:** Grantee shall remit to State any unexpended funds that were disbursed to Grantee under this Grant 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 Grantee of funds or, within thirty (30) calendar days of the expiration of the Grant Agreement, whichever comes first.

D.2) ACKNOWLEDGEMENT OF CREDIT: Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Projects or using any data and/or information developed under this Grant Agreement. During construction of each project, Grantee shall install a sign at a prominent location, which shall include a statement that the project is financed under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, administered by State of California, Department of Water Resources. Grantee shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

D.3) AIR OR WATER POLLUTION VIOLATION: Under State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

D.4) AMENDMENT: This Grant 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 Grantee for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

D.5) AMERICANS WITH DISABILITIES ACT: By signing this Grant Agreement, Grantee 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.6) APPROVAL: This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until all required signatures have been obtained.

D.7) AUDITS: State reserves the right to conduct an audit at any time between the execution of this Grant Agreement and the completion of Projects, with the costs of such audit borne by State. After completion of the Projects, State may require Grantee to conduct a final audit to State's specifications, at Grantee's expense, such audit to be conducted by and a report prepared by an independent

Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may elect to pursue any remedies provided in Paragraph 14 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code Section 8546.7, the Grantee shall be subject to the examination and audit by the State for a period of three years after final payment under this Grant Agreement with respect to all matters connected with this Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of Grantee or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after project completion or final billing, whichever comes later.

- D.8) BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Grant Agreement does not appropriate sufficient funds for the Proposition 84 Implementation Grant Program, this Grant 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 Grant Agreement. In this event, State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Grant Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement. Nothing in this Grant Agreement shall be construed to provide Grantee with a right of priority for payment over any other Grantee. If funding for any fiscal year after the current year covered by this Grant Agreement is reduced or deleted by the Budget Act for purposes of this program, State shall have the option to either cancel this Grant Agreement with no liability occurring to State, or offer a Grant Agreement amendment to Grantee to reflect the reduced amount.
- D.9) CALIFORNIA CONSERVATION CORPS:** As required in Water Code section 79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Exhibit A, Work Plan, and shall use the services of one of these organizations whenever feasible.
- D.10) CEQA:** Activities funded under this Grant Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.). Information on CEQA may be found at the following links:
- Environmental Information: <http://ceres.ca.gov/ceqa/>
- California State Clearinghouse Handbook: <http://ceres.ca.gov/planning/sch/>
- D.11) CHILD SUPPORT COMPLIANCE ACT:** For any Grant Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:
- a) The Grantee 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 Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Grantee, 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.12) CLAIMS DISPUTE:** Any claim that the Grantee 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 State's Project Manager, within thirty (30) days of the Grantee's knowledge of the claim. State and Grantee 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.13) COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Grant Agreement.

- D.14) COMPUTER SOFTWARE:** Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Grant Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- D.15) 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 Grantee:** Employees of the Grantee 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, Cal. Gov't Code § 87100 et seq.
 - d) **Employees and Consultants to the Grantee:** Individuals working on behalf of a Grantee 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.16) DELIVERY OF INFORMATION, REPORTS, AND DATA:** Grantee agrees to expeditiously provide throughout the term of this Grant Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.17) DISPOSITION OF EQUIPMENT:** Grantee shall provide to State, not less than 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 60 calendar days of receipt of such inventory State shall provide Grantee with a list of the items on the inventory that State will take title to. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D.18) DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Grant Agreement, Grantee, 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 (Government 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(a)(1).
 - b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - i) The dangers of drug abuse in the workplace,

- ii) Grantee'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 Sections 8355(a)(3), that every employee, contractor, and/or **subcontractor** who works under this Grant Agreement:

- i) Will receive a copy of Grantee's drug-free policy statement, and
- ii) Will agree to abide by terms of Grantee's condition of employment, contract or **subcontract**.

- D.19) FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL:** Upon completion of the Project, Grantee shall provide for a final inspection and certification by the appropriate registered professional (California Registered Civil Engineer or Geologist) that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Grant Agreement. Grantee shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.
- D.20) GRANTEE COMMITMENTS:** Grantee accepts and agrees to comply with all terms, provisions, conditions and commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the Grantee in the application, documents, amendments, and communications filed in support of its request for funding.
- D.21) GRANTEE NAME CHANGE:** Approval of the State's Program Manager is required to change the Grantee's name as listed on this Grant Agreement. Upon receipt of legal documentation of the name change the State will process an amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- D.22) GOVERNING LAW:** This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.23) INDEMNIFICATION:** Grantee 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 Projects 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. Grantee shall require its contractors or **subcontractors** to name the State, its officers, agents and employees as additional insured on their liability insurance for activities undertaken pursuant to this Agreement.
- D.24) INDEPENDENT CAPACITY:** Grantee, and the agents and employees of Grantees, in the performance of the Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D.25) 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 Grant 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 Grant Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.
- D.26) 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 Grant Agreement. This right shall extend to any **subcontracts**, and Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Grant Agreement with State.
- D.27) INVOICE DISPUTES:** In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. Any claim that Grantee may

have regarding the performance of this Grant Agreement including, but not limited to claims for additional compensation or extension of time, shall be submitted to the DWR Project Manager within thirty (30) calendar days of Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Grant Agreement to implement the terms of any such resolution.

- D.28) LABOR CODE COMPLIANCE:** The Grantee will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including, but not limited to, Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5) and payment of prevailing wages for work done and funded pursuant to these Guidelines, including any payments to the Department of Industrial Relations under Labor Code Section 1771.3.
- D.29) MODIFICATION OF OVERALL WORK PLAN:** At the request of the Grantee, the State may at its sole discretion approve non-material changes to the portions of Exhibit A which concern the budget and schedule without formally amending this Grant 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 Grant Agreement. Non-material changes with respect to each Project schedule are changes that will not extend the term of this Grant Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Grantee to the State in writing and are not effective unless and until specifically approved by the State's Project Manager in writing.
- D.30) NONDISCRIMINATION:** During the performance of this Grant Agreement, Grantee 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, 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 status, and denial of medial and family care leave or pregnancy disability leave. Grantee 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. Grantee and its contractors or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee 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.
- Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Grant Agreement.
- D.31) NO DISCRIMINATION AGAINST DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the Grantee certifies by signing this Grant Agreement, under penalty of perjury under the laws of State of California that Grantee is in compliance with Public Contract Code section 10295.3.
- D.32) OPINIONS AND DETERMINATIONS:** Where the terms of this Grant 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.33) PERFORMANCE AND ASSURANCES:** Grantee agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in Exhibit A, "Work Plan" and to apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law.
- D.34) PRIORITY HIRING CONSIDERATIONS:** If this Grant Agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the Grant Agreement

to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

- D.35) PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The Grantee 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 Projects, or with Grantee's service of water, without prior permission of State. Grantee 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 Grantee to meet its obligations under this Grant 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.36) REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this Grant 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.37) RETENTION:** Notwithstanding any other provision of this Grant Agreement, State shall, for each project, withhold five percent (5.0%) until January 1, 2018 and ten percent (10.0%), thereafter, of the funds requested by Grantee for reimbursement of Eligible Costs. Each project in this Grant Agreement will be eligible to release its respective retention when that project is completed and Grantee has met requirements of Paragraph 19, "Submissions of Reports" as follows: At such time as the "Project Completion Report" required under Paragraph 19 is submitted to and approved by State, State shall disburse the retained funds as to that project to Grantee, except in the case of the last project to be completed under this Grant Agreement, in which case retention for such project will not be disbursed until the "Grant Completion Report" is submitted to and approved by State.
- D.38) RIGHTS IN DATA:** Grantee 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 Grant 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., Cal. Gov't Code §6250 *et seq.* Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Grant Agreement, subject to appropriate acknowledgement of credit to State for financial support. Grantee 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.39) SEVERABILITY:** Should any portion of this Grant Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Grant Agreement shall continue as modified.
- D.40) STATE REVIEWS:** The parties agree that review or approval of project applications, documents, permits, plans, and specifications or other project information by the State is for administrative purposes only and does not relieve the Grantee of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the projects.
- D.41) SUSPENSION OF PAYMENTS:** This Grant Agreement may be subject to suspension of payments or termination, or both, and Grantee may be subject to debarment if the State determines that:
- a) Grantee, its contractors, or subcontractors have made a false certification, or
 - b) Grantee, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Grant Agreement.
- D.42) SUCCESSORS AND ASSIGNS:** This Grant Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Grant Agreement or any part thereof, rights hereunder, or interest herein by the Grantee 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.43) TERMINATION BY GRANTEE:** Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date.

- D.44) TERMINATION FOR CAUSE:** Subject to the right to cure under Paragraph 14, the State may terminate this Grant Agreement and be relieved of any payments should Grantee fail to perform the requirements of this Grant Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 14.
- D.45) TERMINATION WITHOUT CAUSE:** The State may terminate this Agreement without cause on 30 days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.46) 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.47) TIMELINESS:** Time is of the essence in this Grant Agreement.
- D.48) TRAVEL:** Travel cost includes the cost of transportation and lodging incurred by the Grantee and Local Project Sponsors for the purpose of travelling from the designated headquarters to the project location during the term of this Grant Agreement. Travel activities, not identified in Exhibit A, shall NOT be eligible for reimbursement unless prior written authorization is obtained from the State. Travel shall be reimbursed consistent with the rates applicable at the time of travel as published at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>.
- D.49) WAIVER OF RIGHTS:** None of the provisions of this Grant 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 Grant Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Grant 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.
- D.50) WORKERS' COMPENSATION:** Grantee affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Grant Agreement and will make its contractors and subcontractors aware of this provision.

Exhibit E

Quarterly Reporting Form

