

## EXHIBIT D

### CALIFORNIA STATE WATER BOARD PROVISIONS

*This Construction Contract Agreement with the City of Chino includes the following contract requirements incorporated by reference, as well as summarized here as incorporated in the Drinking Water Construction Grant and Loan Agreement for 3610012-008C Project. By accepting this contract, the contractor acknowledges and agrees to the exhibits hereon.*

#### Agreement – Section 5

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

- “Agreement” means the installment sale agreement issued by the State Water Resources Control Board (State Water Board), including all exhibits and attachments hereto.
- “Cover Page” means the front page of Agreement.
- “Days” means calendar days unless otherwise expressly indicated.
- “Deputy Director” means the Deputy Director of the Division.
- “Division” means the Division of Financial Assistance of the State Water Board or any other division or unit of the State Water Board authorized to administer this Agreement.
- “Event of Default” means the occurrence of any of the following events:
  - a) 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;
  - 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) 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;
  - e) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of

- the Government Code; or
- f) Loss of the Recipient's rights, licenses, permits, or privileges necessary for the Project, or the occurrence of any material restraint on the Recipient's enterprise by a government agency or court order.
- "Final Reimbursement Request Date" means the date set forth as such on the Cover Page of Agreement, after which date, no further reimbursements or disbursements may be requested.
  - "Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year.
  - "GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.
  - "Material Obligation" means an obligation of the Recipient that is material to this transaction.
  - "Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Division staff set forth in Section 4 of Agreement.
  - "Project" means the Project funded by Agreement as described in Exhibits A ("Scope of Work") and B ("Funding Terms") and in the documents incorporated by reference herein.
  - "Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is complete to the reasonable satisfaction of the Division.
  - "Project Costs" means the incurred costs of the Recipient which are eligible for funding under Agreement, pursuant to applicable statutes, policy, regulations, or guidelines.
  - "Project Funding Amount" means the maximum amount payable under Agreement, as set forth on the Cover Page.
  - "Project Funds" means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to Agreement.
  - "Project Manager" means the person designated by the State Water Board to manage performance of Agreement.
  - "Records Retention End Date" means the last date that the Recipient is obligated to maintain records related to Agreement and is set forth on the Cover Page of this Agreement.
  - "Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.
  - "Reimbursement Period" means the period during which Project Funds may be disbursed.
  - "Reimbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B – Funding Terms.
  - "State" means State of California.

- “State Water Board” means the State Water Resources Control Board.
- “System” means all drinking water collection, pumping, 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.
- “Useful Life” means the economically useful life of the Project beginning at Completion of Construction and is set forth in Exhibit A–Scope of Work.
- “Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A–Scope of Work for review and approval by the Division.
- “Work Completion Date” means the date set forth on the Cover Page of Agreement and is the last date on which Project Costs may be incurred under Agreement.
- “Year” means calendar year unless otherwise expressly indicated.

## **Exhibit C - General & Programmatic Terms and Conditions**

### **C.3 STANDARD CONDITIONS**

1. **ACCESS, INSPECTION, AND PUBLIC RECORDS.** The Recipient must ensure that the State Water Board, the State Auditor, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times through the Records Retention End Date or useful life of the Project, whichever is longer. The Recipient acknowledges that, except for a subset of information regarding archaeological records and personally identifiable information, the Project records and locations may be public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, Reimbursement Requests, and supporting documentation submitted hereunder.
2. **ACCOUNTING AND AUDITING STANDARDS; FINANCIAL MANAGEMENT SYSTEMS.** The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets. Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
  - (a) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (b) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Project Funds received under this Agreement;
  - (c) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Project Funds disbursed under this Agreement;
  - (d) Establish an accounting system which will accurately depict final total costs of the Project if authorized under this Agreement;
  - (e) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements

under federal tax statutes or regulations; and

- (f) If the Recipient uses its own employees, equipment, or resources for any phase of the Project, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- 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 and approved as required.
- 4. ASSIGNABILITY. This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board. Amendment of the Agreement may be required.
- 5. AUDIT. The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of State or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division. The Recipient must return, or ensure the return of, any audit disallowances within 30 days.
- 6. BONDING. Where construction contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.
- 7. COMPETITIVE BIDDING. Recipient must adhere to any applicable State law or local ordinance for competitive bidding and applicable labor laws. If Recipient is a private entity, any construction contracts related in any way to the Project must be let by competitive bid procedures which assure award of such contracts to the lowest responsive and responsible bidders. Recipient must not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the Division. Recipient must provide a full explanation if Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.
- 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 and with provisions of the adopted environmental mitigation plan, if any, for the useful life of the Project.
- 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.
- 10. CONFLICT OF INTEREST. The Recipient certifies that it, its owners, officers, directors, agents, representatives, and employees are in compliance with applicable State and federal conflict of interest laws and will remain in compliance for the useful life of the Project. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances. Public entities are required to have adopted conflict of interest codes and may be required to provide documentation of those codes to the Division.
- 11. DATA MANAGEMENT. The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

12. **DEBARRED, DISQUALIFIED, OR EXCLUDED CONTRACTORS.** The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/fwa/dbp.sht\\_m](http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.sht_m)
13. **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.
14. **ENVIRONMENTAL CLEARANCE.** No work that is subject to California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA) may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement. If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
15. **FINAL REIMBURSEMENT REQUEST.** The Recipient agrees to ensure that its final Reimbursement Request is received by the Division no later than the Final Reimbursement Request Date, unless prior approval has been granted by the Division. If the final Reimbursement Request is not received timely, the undisbursed balance of this Agreement may be deobligated.
16. **FRAUD AND MISUSE OF PUBLIC FUNDS.** All requests for disbursement must be accurate and signed by the Recipient or its Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in

suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

17. **FUNDING CONTINGENCY.** The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement. The State Water Board's obligation to disburse funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.
18. **GOVERNING LAW.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
19. **RECIPIENT'S SHARE.** The Recipient agrees that it will provide for the payment of its full share, if any share is required, of Project Costs and that all costs connected with the Project will be timely paid by the Recipient.
20. **INDEMNIFICATION AND STATE REVIEWS.** The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified 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.

21. **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.
22. **INSPECTION.** Throughout the useful life of the Project, the State Water Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.
23. **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.
24. **LIENS.** The Recipient must not make any pledge of or place any lien on the Project or Project assets except upon consent of the Division.
25. **NO DISCRIMINATION.** 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 on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project. If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property. The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b). The Recipient's obligations under this section shall survive the term of this Agreement. During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status. The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.  
The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
26. **NO THIRD-PARTY RIGHTS.** This Agreement creates no rights in and grants no remedies to any third party as a beneficiary of this Agreement.
27. **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.
28. **NON-WAIVER.** Nothing in this Agreement shall affect or impair the Recipient's obligation to undertake work under this Agreement or shall affect or impair the right of the State Water Board to bring suit to enforce such work. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the

State Water Board, any remedy or right provided by law or pursuant to this Agreement. Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

29. **OTHER FUNDING SOURCES; INCOME RESTRICTIONS.** If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's contribution to Project costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board. The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient as related to this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.
30. **PERMITS AND AUTHORIZATIONS.** Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction or implementation begins.
31. Any contractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Project Manager.
32. **PREVAILING WAGES.** If applicable, the Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. If applicable, the Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the applicable prevailing wage provisions of the State Labor Code are being met. Division of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
33. **PRIOR COSTS.** No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
34. **PROFESSIONALS.** The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
35. **RECORDS, INSPECTION, AUDITS, AND INTERVIEWS; RECORDS RETENTION.** The Recipient must maintain separate books, records and other material relative to the Project and retain such books, records, subcontracts, and other material until at least the Records Retention End Date set forth on the Cover Page of this Agreement. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Department of Finance, the California State Auditor, the Bureau of State Audits, or any authorized representatives of the aforementioned, including federal funding agencies and their auditors, if any. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.
36. **RELATED LITIGATION.** Under no circumstances may the Recipient use funds from any reimbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water



Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

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

reasonable time as established by the State Water Board.

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

44. **TIMING.** Time is of the essence. The Recipient must expeditiously proceed with and complete the Project. Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.
45. **TRAVEL AND PER DIEM.** No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. No work or travel outside the United States of America is authorized. Failure to comply with this restriction may constitute an Event of Default and result in termination of this Agreement. Any reimbursement for necessary travel and per diem shall be set pursuant to and at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. as of the date costs are incurred by the Recipient.
46. **UNDISBURSED FUNDS.** The Recipient is not entitled to interest earned on undisbursed funds.
47. **UNENFORCEABLE PROVISION; SEVERABILITY.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
48. **UNION ACTIVITIES:** The Recipient hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement. The Recipient certifies that none of the Project Funds will be used to assist, promote, or deter union organizing. If the Recipient incurs costs or makes expenditures to assist, promote, or deter union organizing, the Recipient will maintain records sufficient to show that no reimbursement from Project Funds has been sought for these costs and the Recipient shall provide those records to the Attorney General upon request.
49. **VENUE.** Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.
50. **WAIVER AND RIGHTS OF THE STATE WATER BOARD.** Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
51. **WATER CONSERVATION AND EFFICIENCY PROGRAMS:** The Recipient acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of this Agreement. A web link with examples of water conservation and efficiency programs is available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/conservation.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml).
52. **WATER DIVERSION AND USE:** To the extent applicable, the Recipient has complied with, and shall continue to comply with, the requirements of Water Code, division 2, part 5.1, section 5100 et seq. for filing statements of water diversion and use.
53. **WITHHOLDING OF DISBURSEMENTS AND REIMBURSEMENTS.** Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- a) Failure of the Recipient to maintain reasonable progress on the Project as determined by the Division;
- b) Commencement of litigation or a judicial or administrative proceeding related to the Project, or Recipient that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- c) Any investigation by State, local, or federal investigators or auditors, or a grand jury, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- d) A material adverse change in the condition of the Recipient, or the Project, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
- e) The Recipient's material violation of, or threat to materially violate, any provision of this Agreement;
- f) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents directly or indirectly regarding the Project;
- g) An event requiring notice under this Agreement; or
- h) An Event of Default or an event that the Division determines may become an Event of Default.

## California State Water Board Provisions

### Exhibit D – Special Conditions

1. Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:
  - Work Completion
  - Work Completion Date
2. Each capitalized term used in Agreement has the following meaning:
  - "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
  - "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.
  - "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
  - "District Office" means District Office of the Division of Drinking Water of the State Water Board.
  - "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
  - "Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.
  - "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, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
    - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
    - b) Failure to operate the System or the Project without the Division's approval;
  - "Final Budget Approval" means the Division-approved final budget for the Project, as set forth in Exhibit B.
  - "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.

- "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
  - "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.
  - "Reimbursement Request" means the Recipient's request for Project Funds from the State Water Board as set forth in Exhibit B.
  - "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.
  - "System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the City of Chino, or its successor agency, 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.
  - "Useful Life" means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.
3. Rates and Charges. 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. 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.
4. [tribal waiver of sovereign immunity] Notwithstanding any other provision in this Agreement (including, without limitation, any provision of any Exhibit incorporated in this Agreement by reference) to the contrary, nothing in this Agreement shall be deemed to be a general waiver of the Recipient's sovereign immunity from suit, which immunity is expressly asserted. Provided, however, that for the term of this Agreement

the Recipient hereby expressly, unequivocally, and irrevocably provides a limited waiver of sovereign immunity from suit to allow the State Water Board to exercise all of its rights under the terms of this Agreement, and Recipient consents to suit in any court of the State of California for any claim to interpret or to enforce this Agreement through injunctions, damages, or orders for specific performance with the terms of this Agreement. For the purpose of this provision, an order for specific performance may include, but is not limited to, any court order to pay monetary damages in accordance with the terms of this Agreement. This limited waiver shall extend to the State Water Board, and any successors and assigns to this Agreement.

5. [for projects where DFA wishes to withhold reimbursement until property rights are obtained] The Recipient must deliver an opinion of counsel satisfactory to the Division's counsel prior to any request for disbursement for construction costs under this Agreement, the Recipient must deliver an opinion of counsel satisfactory to the Division's counsel that, the Recipient has sufficient property rights in the Project property for the purposes contemplated in the Agreement and has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) with respect to any property acquired for the purposes of the Project. No funds will be disbursed under this Agreement until the Recipient satisfies this condition.
6. [Environmental/Technical/Financial Special Conditions]
7. Appointment of Receiver/Custodian. 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.
8. [for Prop anything with public entity]. 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.
9. [for PF/SRF] 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.
10. Operation and Maintenance. The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.
11. Insurance. The Recipient will procure and maintain or cause to be maintained insurance on the System and Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System or Project) as are usually covered in connection with systems similar to the System or Project. Such insurance may be

maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program. In the event of any damage to or destruction of the System or Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System or Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System and Project must be free and clear of all claims and liens. Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

12. Notice Events. Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:
  - a. [PF/SRF] The Recipient must notify the Division within 24 hours by phone at (916) 327-9978 and by email to [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov) of 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. The Recipient must notify the Division promptly of the occurrence of any of the following events:
    - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
    - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
    - iii. Loss, theft, damage, or impairment to Project;
    - iv. Events of Default, except as otherwise set forth in this section;
    - v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
    - vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
    - vii. Consideration of dissolution, or disincorporation;
    - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
    - ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents,

- or contractors;
  - x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
  - xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
  - xii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
  - xiii. 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;
  - xiv. Any event requiring notice to the Division pursuant to any other provision of this Agreement.
  - xv. Completion of work on the Project.
  - xvi. The Recipient must promptly notify the Division and Party Contacts of cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - xvii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
  - xviii. The Recipient must promptly notify the Division and Party Contacts of Completion of Construction, and Project Completion;
  - xix. The Recipient must promptly notify the Division and Party Contacts of the award of the prime construction contract for the Project; and the Recipient must promptly notify the Division and Party Contacts of Initiation of construction of the Project.
  - xx. The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption.
  - xxi. [for private DW systems regulated by CPUC] Within three (3) days, if the Recipient is regulated by the California Public Utilities Commission, the Recipient must submit to the State Water Board by certified mail and by email to [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov) copies of any and all documents filed with the California Public Utilities Commission, including but not limited to applications, petitions, and investigations.
13. Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project. The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may



be due.

14. State Cross-Cutters. Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:
  - a) 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.
  - b) Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
  - c) Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
  - d) 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.
  - e) Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
  - f) Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
  - g) Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
  - h) Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
  - i) Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
  - j) Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
  - k) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
15. [for PF/SRF] Financial Management Systems. 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.
16. Fraud, Waste, and Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to reimbursement request, invoices, proof of payment of invoices, or other supporting information,

including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.

17. **DISPUTES.** The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
18. **Additional Representations and Warranties.** The Recipient makes the following representations and warranties:
  - a. The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application, a material fact that makes the statements in its application not misleading.
  - b. The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
  - c. The execution, delivery, and performance by 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.
  - d. Except as set forth in this paragraph, 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 Revenues, and/or the Project.
  - e. There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.

- f. The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
  - g. Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements or other financial documentation, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.
  - h. The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
  - i. The Recipient has no conflicting or material obligations, except as set forth in this paragraph.
  - j. The Recipient legally possesses all real property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as set forth in this paragraph.
  - k. The Recipient and its principals, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized.
  - l. The Recipient possesses all water rights necessary for this Project.
19. [for SRF] Federal SRF Requirements. The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:
- a. 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.

- b. 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.
- c. 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.
- d. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- e. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- f. [for private] The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year.
- g. 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.
- h. 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.
- i. 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.
- j. 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.

- k. 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.
- l. 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.
- m. 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.
- n. The Recipient certifies to the best of its knowledge and belief that:
  - i. 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.
  - ii. 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.
  - iii. 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.
- o. The Recipient must comply with the following federal non-discrimination requirements:
  - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
  - ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
  - iii. The Age Discrimination Act of 1975, which prohibits age discrimination.

- iv. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
  - v. 40 CFR Part 7, as it relates to the foregoing.
  - vi. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech
  - vii. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).
- p. 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."*

- q. 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 this Agreement.
- r. 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/>.
- s. 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.
- t. 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.
- u. 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](http://www.fgdc.gov).
- v. 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.
- w. 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.

- x. The Recipient agrees to immediately notify the **Project Manager / Grant 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.
- y. 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.
- z. 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.
- aa. 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>.