

CITY COUNCIL WORKSHOP

A G E N D A

MONDAY, APRIL 17, 2023

5:30 P.M. Special Session

33 Church Street, Sutter Creek CA 95685

The Agenda can be found on the City's Website: www.cityofsuttercreek.org

THE CITY OF SUTTER CREEK CITY COUNCIL MEETING WILL BE AVAILABLE VIA ZOOM AND
IN PERSON.

Join Zoom Meeting

<https://us02web.zoom.us/j/9568520224>

or

Dial by phone:

301-715-8592

Meeting ID: 956 852 0224

**Public comment will be accepted by email at info@cityofsuttercreek.org. All emails must be received
prior to the start of the meeting.**

5:30 P.M. 1. CALL TO ORDER AND ESTABLISH A QUORUM FOR SPECIAL MEETING

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. PUBLIC FORUM

At this time, the public is permitted to address the City Council on items not appearing on the agenda. Comments may not exceed 5 minutes. In accordance with State Law, however, no action or discussion may take place on any item not appearing on the posted agenda. The City Council may respond to statements made or questions asked or may request Staff to report back at a future meeting on the matter. The exceptions under which the City Council may discuss and/or take action on items not appearing on the agenda are contained in Government Code §54954.2.

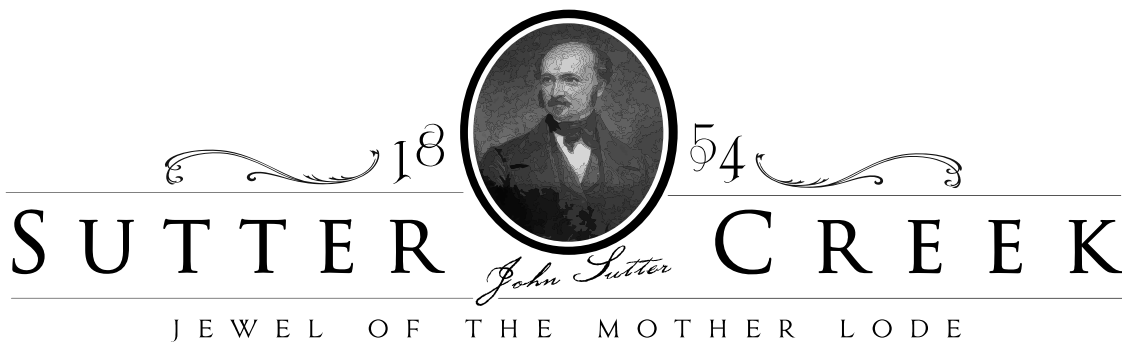
Public comment on any item listed below shall be limited to five minutes, unless additional time is permitted by the Mayor/Council.

*** 4. WORKSHOP AGENDA**

A. Review of Council decision-making regarding the wastewater system and necessary capital expenditures; WWTP Replacement Project Grant.

No action will be taken at the workshop.

5. ADJOURNMENT



STAFF REPORT

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL
MEETING DATE: APRIL 17, 2023
FROM: SANDRA SPELLISCY, INTERIM CITY MANAGER
SUBJECT: COUNCIL DECISION MAKING ON WASTEWATER SYSTEM
AND WWTP REPLACEMENT PROJECT GRANT

RECOMMENDATION: Workshop for information and discussion only.

BACKGROUND: In early 2018 both the ARSA Board and the City Council were presented with an ARSA/City Master Plan for the future of the combined wastewater system that serves the residents of Sutter Creek, Amador City and the unincorporated area of Martell. The Master Plan reviewed the current system and made recommendations for capital improvements in future years. A driving force behind the need for, and recommendations of, the Master Plan was the July 2017 letter of intent from the City of Ione stating that it planned to terminate its 2007 agreement with ARSA to accept treated wastewater from the ARSA system by July of 2022.

At the time the Master Plan was presented to the Board and to Council, it was accompanied by a staff recommendation that Sutter Creek upgrade its current secondary WWTP to a tertiary treatment system and seek permitting authority to discharge the treated wastewater directly to the surface waters of Sutter Creek. A summary of the reasons for that recommendation were as follows:

- Project cost is significantly less than other alternatives. (Project costs at that time were estimated to be approximately \$33 million.)
- ARSA will no longer be dependent on agreements with other landowners/agencies for disposal/reuse of WWTP effluent.
- The existing WWTP was constructed in 1949, and most facilities require replacement or extensive rehabilitation with any alternative, at a significant cost to the existing rate payers.
- A new tertiary WWTP can be designed to accommodate future growth or recycled water demands by adding facilities as needed, funded by new users.
- The future costs of repairs/improvements to existing infrastructure such as large transmission pipelines, storage reservoirs, and dams, is avoided.

- There may be environmental benefits that result from discharge of highly treated wastewater to the creek.

On January 24, 2018 the ARSA Board adopted a resolution accepting the 2017 Master Plan as complete and directing staff to pursue construction of a tertiary wastewater treatment plant with discharge to Sutter Creek as the preferred alternative. A section of the staff report recommending that action noted the following:

After the Board selects and adopts the final alternative, the next steps of the project - predesign, rate study, environmental, legal, final design, and administrative actions - are required to be implemented before the solution can begin. ***It is important to select the final alternative without delay in order to construct a project that meets the currently proposed end date of July 31, 2022, of the 2007 Ione Disposal Agreement.*** (Emphasis added)

On February 20, 2018, the City Council took the same action.

On August 3, 2020, the City Council adopted a resolution authorizing the City Manager to enter into a grant agreement for up to \$500,000 between the city and the State Water Resources Control Board for the purpose of beginning the design-build effort for a wastewater treatment plant replacement. The city hired Carollo Engineers to be the Owner's Advisor (OA) to assist the city in the project.

During the months of January through May 2021 Carollo held a number of project meetings with city staff and council members as well as other participants. In the course of these meetings it was determined that the estimated cost to construct the tertiary plant had risen to approximately \$50 million in 2021 dollars. The was due to the inflationary effects of the pandemic on the construction industry and supply chains, but primarily to the determination that the 2017 Master Plan had underestimated the peak flows to the plant because of what it considered the anomaly of the 2017 rainy season, and had discounted the problem of inflow and infiltration in the collection system when determining peak flows.

At some point there appears to have been some rough calculations done to determine the effect of the increased cost of the project on wastewater rates in Sutter Creek, taking into account the then-availability of state and federal dollars to help fund the project. Staff has been unable to locate any documentation regarding these calculations, or any official action taken based on that information.

The final project meeting with Carollo took place in May of 2021. Following that meeting Carollo was informed by city staff that the project was on hold and that the firm should not do any further work under the grant.

During the summer and early fall of 2021 the Council sewer committee held six meetings. As is custom, there are no minutes from those meetings and no record of the discussions that took place.

At the August 2, 2021 Council meeting City Manager Gedney noted in the City Manager report that the Wastewater Treatment Plant Project was moving along and that she would be providing an update at the next meeting.

At the August 16, 2021 Council meeting Gedney provided an update to the Council on the WWTP Replacement Project. She stated that “work continues but there are I & I issues, and the Sewer Committee is looking at options.” She also noted that “the sewer committee will need to revise the plan of study and scope of work (for the grant) and resubmit to the State.” (From CC meeting minutes.)

The most recent project status report that was submitted to the SWRCB was in January of this year. The report stated that the consultant’s work continued to be on hold. In answer to the question whether any of the deliverables were behind schedule or past due the city’s response was “All are past due. We are working to re-evaluate alternatives.”

The deadline for completion of work under the WWTP Replacement Project grant is September 30 of this year. No project deliverables have been completed at this time, although approximately \$185,000 of grant funds have been expended and reimbursed by the state. The city has never requested an amendment to the grant to revise the scope of work or the timelines for deliverables.

DISCUSSION: As far as staff can ascertain, the last official action taken by the Council regarding the future direction of the wastewater system and the expenditure of capital funds was the approval of the resolution in 2018 to adopt the Master Plan and direct staff to begin the process of construction of a tertiary treatment plant.

There is an urgent need to re-engage the Council in the decision-making process regarding the future of the city’s wastewater system and operation, its capital needs, and to provide direction to staff regarding next steps on the outstanding grant.

City staff have been in contact with staff from Division of Financial Assistance at the SWRCB to discuss the possibility of seeking a grant extension and a revision to the scope of work for the project. According to DFA, it will take at least six months to get approval and to process a grant amendment.

BUDGET IMPACT: Unknown at this time.

ATTACHMENT:

1. ARSA staff report and resolution from January 24, 2018 Board meeting regarding the 2017 Master Plan.
2. Staff report and resolution from February 20, 2018 Council meeting regarding the 2017 Master Plan.
3. Staff report and resolution from the August 3, 2020 Council meeting regarding the execution of the grant agreement with SWRCB

Amador Regional Sanitation Authority

"Servicing Amador City, Martell, & Sutter Creek"

STAFF REPORT

TO: ARSA BOARD OF DIRECTORS
MEETING DATE: JANUARY 24, 2018
FROM: AMY GEDNEY, INTERIM GENERAL MANAGER
SUBJECT: MASTER PLAN

RECOMMENDATION:

Adopt Resolution 17-18-* accepting the 2017 Master Plan as complete and directing staff to pursue alternative 3 tertiary wastewater treatment plant with discharge to Sutter Creek as the preferred alternative.

BACKGROUND:

As you are aware, the fate of ARSA has lingered for some time, predicated on the Regional Study, the Three Party 2007 Agreement, and the Master Plan. With Ione having given ARSA notice of its intent to withdraw from the Three Party 2007 Agreement, it is apparent that a "regional solution" involving Ione, California Department of Corrections, ("CDCR"), and ARSA will not continue. Therefore, the "clock is ticking" for ARSA to be able to identify, pursue, receive approval, and construct improvements for disposal.

At your last meeting, the Master Plan was presented by HydroScience, the consultant who prepared the document. Subsequent to the Master Plan presentation, staff also presented a staff report requesting an outside consultant perform a peer review of the Master Plan Technical Memorandums. The Board did not take action, however, in the interest of saving time, staff directed the consultant to proceed so that staff could move ahead with direction from the ARSA Board regarding the number of critical issues facing ARSA.

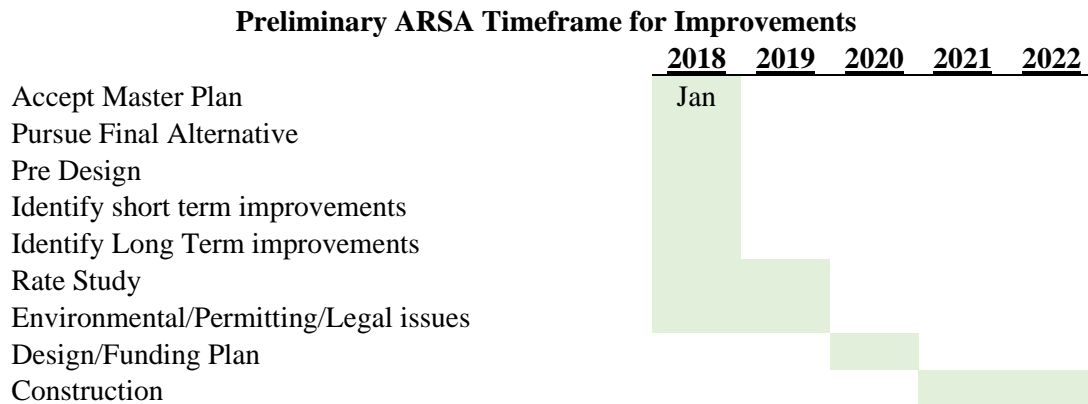
DISCUSSION:

Attached to this report is a summary of conclusions for each Technical Memorandum prepared by Larry Parlin of Carollo Engineering. After lengthy discussions, meetings with sister agencies who have been faced with similar dilemmas, staff concurs with his conclusions and recommends that the Board accept the Master Plan as complete and direct staff to proceed with Alternative 3, Tertiary WWTP with discharge to Sutter Creek.

The Master Plan document as presented is complete as a broad brush review of potential options. While the consultant who prepared the document identified a different recommendation, outside peer review and staff recommend Alternative 3, (Tertiary WWTP with discharge to Sutter Creek) as the preferred alternative based on the following criteria:

- Project cost is significantly less than other alternatives.
- ASRA will no longer be dependent on agreements with other land owners/agencies for disposal/reuse of WWTP effluent.
- The existing WWTP was constructed in 1949, and most facilities require replacement or extensive rehabilitation with any alternative, at a significant cost to the existing rate payers.
- The future costs of repairs/improvements to existing infrastructure such as large transmission pipelines, storage reservoirs, and dams, is avoided.

Meanwhile, below is a quick snapshot of the next four years for ARSA.



NEXT STEPS:

After the Board selects and adopts the final alternative, the next steps of the project; predesign, rate study, environmental, legal, final design, and administrative actions required to implement the solution can begin. It is important to select the final alternative without delay in order to construct a project that meets the currently proposed end date of July 31, 2022, of the 2007 Ione Disposal Agreement.

RESOLUTION 17-18-06
A RESOLUTION OF THE AMADOR REGIONAL SANITATION AUTHORITY
ACCEPTING THE 2017 MASTER PLAN AS COMPLETE

WHEREAS, the Amador Regional Sanitation Authority's ("ARSA") responsibility is to dispose of treated effluent from the City of Sutter Creek's Wastewater Treatment Plant ("WWTP"), and

WHEREAS, the financial partners of ARSA are the City of Sutter Creek, Amador City, and the Amador Water Agency, and

WHEREAS, a Master Plan for disposing of treated effluent has been prepared and presented to the ARSA Board, and

WHEREAS, said Master Plan is attached as Attachment A.

NOW THEREFORE BE IT RESOLVED, the ARSA Board hereby accepts the Master Plan.

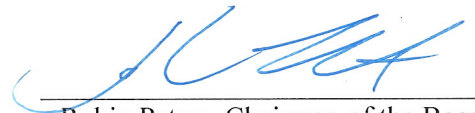
The forgoing resolution was duly passed and adopted by the Board of Directors of the Amador Regional Sanitation Authority at a regular meeting held on the 24th day of January, 2018, by the following vote:

AYES: Axe, Bragstad, Forster, Swift and Peters

NOES:

ABSTAIN:

ABSENT:

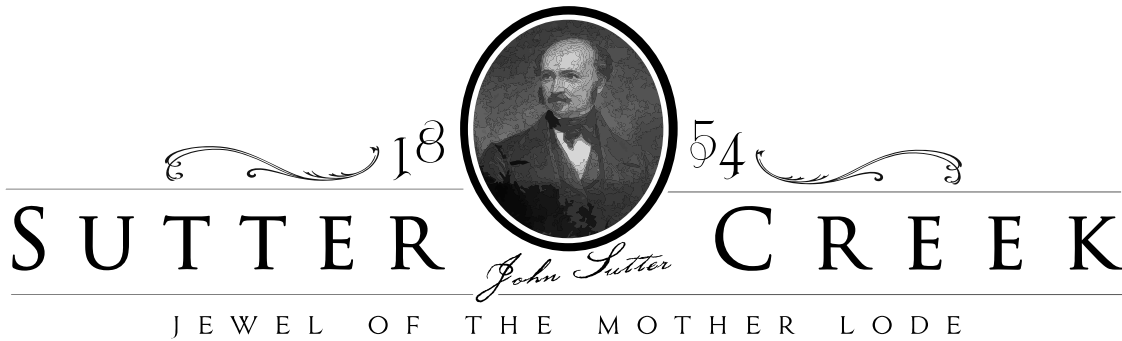


Robin Peters, Chairman of the Board

ATTEST:



Karen Darrow, Clerk of the Board



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

MEETING DATE: FEBRUARY 20, 2018

FROM: AMY GEDNEY, CITY MANAGER

SUBJECT: WASTEWATER TREATMENT PLANT AND ARSA MASTER PLAN

RECOMMENDATION:

Adopt Resolution 17-18-* accepting the 2017 Master Plan as complete and directing staff to pursue Alternative 3 as presented - tertiary wastewater treatment plant with discharge to Sutter Creek as the preferred alternative.

BACKGROUND:

The Amador Regional Sanitation Authority (“ARSA”) Board has authority to oversee disposal of treated effluent from the City of Sutter Creek’s wastewater treatment plant (“WWTP”). The system by which the effluent is disposed, dates to the late 1800s when Henderson Reservoir was constructed. Once effluent leaves the City’s WWTP, it enters what is known as the “Upper ARSA System” and flows through a series of pipes and ditches to a flood irrigation site, known as Bowers Ranch. The effluent then travels down stream to the Henderson Reservoir. From Henderson Reservoir the effluent flows to the Hoskins Ranch, and then to what is known as the “Lower ARSA System” into Preston Forebay and then to Preston Reservoir to the outfall of the pipeline where it enters the Castle Oaks property.

The fate of ARSA has been uncertain since 2012, due to assumptions with the Gold Rush Ranch development in the City of Sutter Creek, completion of a Regional Study, the 2007 Three Party Agreement, and the Upper ARSA System Master Plan. In July 2017, the City of Ione provided ARSA with notice of its intent to withdraw from the 2007 Three Party Agreement, effective July 2022. This means that by July 2022, ARSA is required to eliminate all flows to the Lower ARSA System. As a consequence of the termination letter, it is apparent that a regional solution involving Ione, California Department of Corrections, (“CDCR”), and ARSA will not continue. Therefore, the “clock is ticking” for ARSA to identify, pursue, receive approval for, and construct improvements for disposal by July of 2022.

Attachment A to the resolution provides the Technical Memorandums of the 2017 Master Plan. At ARSA’s December 2017 meeting, the Master Plan was presented and discussed. Subsequently, an outside peer review was also completed to provide an assessment of the options presented in the Master Plan and to provide an objective review. That discussion was held at ARSA’s January 2018 meeting. At that meeting, the ARSA Board subsequently accepted the Master Plan as complete, directed staff to pursue Alternative 3 and also directed staff to present this body of work to the City of Sutter Creek City Council.

DISCUSSION:

Recent Events

The ARSA Board has grappled with a number of complex issues over the last year relating to the heavy rains of 2017 that caused storage capacity issues at Preston Reservoir compounded by an aging antiquated disposal system that is in need of major repairs. The storage issues subsequently resulted in a Notice of Violation, (“NOV”), a Cleanup and Abatement Order (“CAO”) from the Regional Water Quality Control Board, (“RWQCB”) as well as a settlement agreement with CDCR. Additionally, the RWQCB has also indicated to ARSA that with the existing system, more stringent requirements will be required for its Waste Discharge Requirement (“WDR”) permit.

During this period, development of the Master Plan for ARSA and the City of Sutter Creek was also underway. Also during this period, in July 2017, as noted above, the City of Ione provided notice to ARSA that it was exercising its right to withdraw from the 2007 Three Party Agreement, effective July 2022. As a result, this information was also incorporated into the Master Plan. Furthermore, this withdrawal from the 2007 Three Party Agreement requires ARSA to have an alternative disposal method in place for Preston Reservoir by July 2022. And, an alternative disposal method requires a revised WDR permit.

The Master Plan as presented in Technical Memorandums 4 and 5 proposes a Preferred Alternative - expansion of the existing ARSA sprayfields, presented as Alternative 1. Though detailed criteria were used as weighting factors in the Master Plan, economic considerations were not included. Table 1 summarizes the alternatives and their estimated costs as presented in Technical Memorandum 4.

Table 1. Summary of Alternative Costs.

	Alternative	Cost (In millions) \$
Without GRR	Alternative 1: ARSA Sprayfields	94.9
	Alternative 2: Noble Ranch Sprayfields	95.1
	Alternative 3: Tertiary Treatment with Surface Water Discharge	59.3
WITH GRR	Alternative 4: ARSA Sprayfields with GRR Irrigation	120.2
	Alternative 5: Tertiary Treatment and GRR Irrigation	95.2

With the Master Plan complete and faced with multiple challenges as noted above, the ARSA Board also requested that a peer review be completed of the Master Plan to provide an objective view of the Master Plan given the current constraints of the entire system. Attachment B to the resolution is a summary of conclusions for each Technical Memorandum prepared by Larry Parlin of Carollo Engineering.

In summary, the peer review determined that the Master Plan document as presented is complete as a factual document with a broad-brush review of potential options. However, Alternative 3 provides a more realistic, time sensitive, and cost-effective option for the overall system.

With the pursuit of Alternative 3:

- The cost is significantly less than other alternatives.
- ARSA will no longer be dependent on agreements with other land owners/agencies for disposal/reuse of WWTP effluent.
- A new tertiary WWTP can be designed to accommodate future growth or recycled water demands by adding facilities as needed, funded by new users.
- The future costs of repairs/improvements to existing infrastructure such as large transmission pipelines, storage reservoirs, and dams, is avoided.
- There may be environmental benefits that result from discharge of highly treated wastewater to the creek.

The ARSA system is antiquated. The Agreements in place to operate the system require unnecessary overtime costs and complex legal negotiations resulting in additional costs to the rate payers. The oversight of the ARSA Board for the City of Sutter Creek's wastewater flow is also unnecessary and is an added cost to operate the system. Furthermore, after lengthy staff reviews of the system's operations and meetings with sister agencies that have faced similar dilemmas, staff concurs with the conclusions of the peer review and recommends that the City Council accept the Master Plan as complete and direct staff to proceed with Alternative 3 - Tertiary WWTP with discharge to Sutter Creek.

Impacts on New Development and Existing Agreements

On January 19, 2010 the City of Sutter Creek entered into a Development Agreement with Gold Rush Golf, LLC. The Development Agreement specifies terms and conditions required for development, should development occur. Over the last several years there has been much deliberation regarding the City's wastewater treatment plant. Much of the deliberation has also included the buildout of Gold Rush Ranch, ("GRR"). To that end, the City and ARSA have also stalled some of the Master Planning in anticipation of the start up of the GRR project. As a result, the Master Plan for both ARSA and the City of Sutter Creek has been in a holding pattern. While the City did enter into a Development Agreement which required certain conditions to be met should the project move forward, the City does not have the authority to require a developer to move forward. Similarly, the City can not compel a property owner to build a new house on a vacant parcel zoned residential.

Should the development not move forward in a timely manner, as outlined in Section 1.8 of the Development Agreement, the City can make findings through a review process and terminate the vesting rights of the development. The City can not compel the development to move forward however.

Condition of Approval 1.14 requires that the developer shall “plan design and construct, at its sole cost and expense...a tertiary wastewater treatment plant...” At this point, the project has not moved forward and no application has been made to begin the project. Therefore, should the City elect to move forward with a tertiary treatment plant with discharge into the creek, the City would begin a new impact analysis for connection fees and a rate study. All future development will be required to ‘buy-in’ to the new WWTP through connection fees. Subsequently, should the development begin to move forward without the City having terminated the development’s vested rights, the City would then negotiate revised parameters of the Agreement.

Section 4.2 of the Development Agreement requires that the City perform an Annual Review of good faith compliance by the Developer. If the City determines that the Developer has not met conditions in a timely manner, the City can terminate the Development Agreement. Termination of the Development Agreement does not terminate or “revert” the adopted Specific Plan back to its “original” use. Termination simply means that the Developer does not have any vested rights; but the Specific Plan is still in place as a part of the General Plan land use diagram.

Future of ARSA

Ultimately over the course of the next four and a half year, it is anticipated that with the tertiary treatment option with direct discharge into the creek, ARSA would no longer need to exist and its assets would become assets of the City of Sutter Creek, including the spray easement at Noble Ranch. Dissolution of ARSA would take some time as the wind down of the existing Agreements occurs.

CEQA REVIEW:

Adoption of the Sewer Collection System Master Plan does not constitute a project under the California Environmental Quality Act (CEQA) Guidelines [Section 15378(b)(2)]

NEXT STEPS:

Once an Alternative is selected, the steps that follow are: predesign, a rate study, environmental, legal, final design, and administrative actions required to implement the solution can begin. It is important to select the final alternative without delay in order to construct a project that meets the currently proposed end date of July 31, 2022, of the 2007 Three Party Agreement.

RESOLUTION 17-18-21
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUTTER CREEK
ACCEPTING THE 2017 MASTER PLAN AS COMPLETE AND DIRECTING STAFF
TO PURSUE ALTERNATIVE 3 AS PRESENTED- TERTIARY WASTEWATER
TREATMENT PLANT WITH DISCHARGE TO SUTTER CREEK AS THE
PREFERRED ALTERNATIVE

WHEREAS, the City of Sutter Creek ("City") owns and operates the sewer utility systems contained within the City limits; and

WHEREAS, the Amador Regional Sanitation Authority's ("ARSA") responsibility is to dispose of treated effluent from the City of Sutter Creek's Wastewater Treatment Plant, ("WWTP"), and

WHEREAS, a Master Plan for disposing of treated effluent has been prepared and presented to the City of Sutter Creek's City Council and the ARSA Board of Directors, and

WHEREAS, said Master Plan has been completed and is attached as Attachment A and

WHEREAS, both the City Council of the City of Sutter Creek and the ARSA Board of Directors recognize that with the pursuit of Alternative 3:

- The cost is significantly less than other alternatives.
- ARSA will no longer being dependent on agreements with other land owners/agencies for disposal/reuse of WWTP effluent.
- A new tertiary WWTP can be designed to accommodate future growth or recycled water demands by adding facilities as needed, funded by new users.
- The future costs of repairs/improvements to existing infrastructure such as large transmission pipelines, storage reservoirs, and dams, is avoided.

NOW THEREFORE BE IT RESOLVED, the City Council of the City of Sutter Creek hereby accepts the Master Plan as complete.

BE IT FURTHER RESOLVED that the City Council of the City of Sutter Creek hereby directs staff to pursue tertiary wastewater treatment plant improvements with future discharge to Sutter Creek for the reasons as stated above as the preferred alternative.

The forgoing resolution was duly passed and adopted by the City Council of the City of Sutter Creek at a regular meeting held on the 20th day of February, 2018, by the following vote:

AYES: Murphy, Peters, Swift and Cadieux-Faillers

NOES:

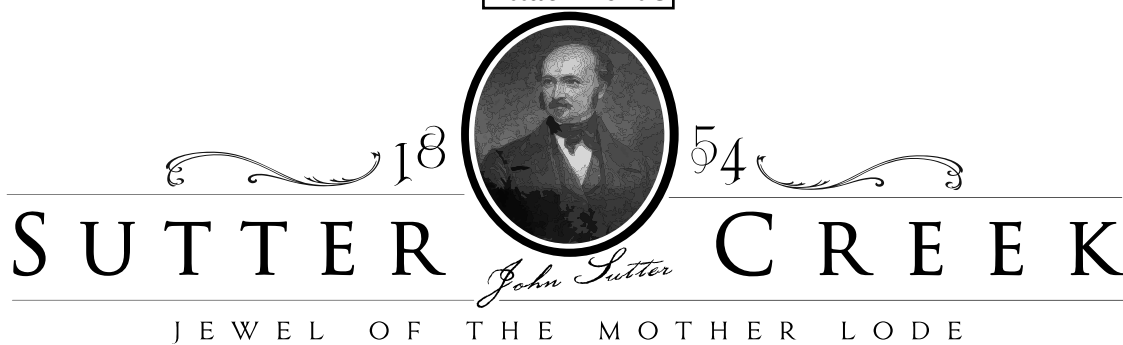
ABSTAIN:

ABSENT: Rianda

ATTEST:


Karen Darrow, City Clerk


Josie Cadieux-Faillers, Vice Mayor



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

MEETING DATE: AUGUST 3, 2020

FROM: AMY GEDNEY, CITY MANAGER

SUBJECT: CONTRACT WITH CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

RECOMMENDATION:

Adoption of Resolution 20-21-* Authorizing the City Manager to sign Agreement No. SWRCB0000000000D1901039 by and between the City of Sutter Creek and the California State Water Resources Control Board for the purpose of the pre-design for wastewater treatment replacement project no. C-06-8452-110.

BACKGROUND:

Two years ago staff submitted an application to receive planning grant funds to narrow alternatives for upgrading our seventy year old wastewater treatment plant.

DISCUSSION:

In February, the City entered into a contract with Carollo Engineers to develop alternatives for the wastewater treatment plant and to develop a Request for Qualifications for a design-build project. The City Council was anticipating the grant would be approved soon and due to time constraints previously discussed regarding the wastewater treatment plant, moving forward was prudent. In March 2020, staff advised Carollo not to start work due to the pandemic and concerns over future cash flow issues and the uncertainty regarding the grant contract.

Furthermore, we have now received the contract. The attached contract with the State of California, Water Resources Control Board, would enable the City to receive grant funds to be reimbursed for expenses we will pay to Carollo and to complete the environmental analysis that will also be required as we develop alternatives for our wastewater treatment plant upgrade.

RESOLUTION 20-21-08
A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SUTTER CREEK AUTHORIZING THE CITY MANAGER TO SIGN
AGREEMENT NO. SWRCB0000000000D1901039 BY AND BETWEEN THE CITY OF
SUTTER CREEK AND THE CALIFORNIA STATE WATER RESOURCES CONTROL
BOARD FOR THE PURPOSE OF THE PRE-DESIGN FOR WASTEWATER
TREATMENT REPLACEMENT PROJECT NO. C-06-8452-110

WHEREAS, the City's wastewater treatment plant was constructed in 1949 and is in need of an upgrade; and

WHEREAS, the City submitted a planning grant application to the State Water Resources Control Board to evaluate alternatives to pre-design the wastewater treatment plan and prepare a design-build plan; and

WHEREAS, the planning grant has been approved; and

NOW THEREFORE BE IT RESOLVED, the City Council hereby authorizes the City Manager to execute an agreement between the City of Sutter Creek and the State Water Resource Control Board as outlined in Attachment A.

The foregoing resolution was duly passed and adopted this 3rd day of August, 2020, by the following vote:

AYES: Rianda, Swift and Peters

NOES:

ABSTAIN:

ABSENT: Cadieux-Faillers and Murphy



Robin Peters, Mayor

ATTEST:

Karen Darrow

Karen Darrow, City Clerk



**WATER RECYCLING FUNDING PROGRAM PLANNING GRANT AND CLEAN WATER
SMALL COMMUNITY PLANNING LOAN**

AGREEMENT NO. SWRCB0000000000D1901039

BY AND BETWEEN

CITY OF SUTTER CREEK ("RECIPIENT")

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
("STATE WATER BOARD")

FOR THE PURPOSE OF THE

PRE-DESIGN FOR WASTEWATER TREATMENT REPLACEMENT PROJECT ("PROJECT")

PROJECT NO. C-06-8452-110

SECTION 13475 ET SEQ. OF THE WATER CODE, SECTION 79143 OF THE WATER CODE, AND
RESOLUTION NOS. 2019-0031, 2019-0064, AND 2015-0044.

PROJECT FUNDING AMOUNT: \$500,000.00
GRANT COMPONENT: \$75,000.00
PRINCIPAL FORGIVENESS COMPONENT: \$425,000.00
ESTIMATED REASONABLE PROJECT COST: \$500,000.00

ELIGIBLE WORK START DATE: JUNE 5, 2018
WORK COMPLETION DATE: SEPTEMBER 30, 2023
FINAL REIMBURSEMENT REQUEST DATE: SEPTEMBER 30, 2023
RECORDS RETENTION END DATE: SEPTEMBER 30, 2059

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

- Exhibit A – Scope of Work and Schedule
- Exhibit B – Specific Funding Provisions
- Exhibit C – GENERAL TERMS AND CONDITIONS 2019-NOV
- Exhibit D – Special Conditions

2. The following documents are also incorporated by reference:

- the Waste Discharge Requirement Order No. 94-152

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

State Water Board		City of Sutter Creek	
Section:	Division of Financial Assistance		
Name:	Elvira Reyes, Project Manager	Name:	Amy Gedney, City Manager
Address:	1001 I Street, 16 th Floor	Address:	18 Main Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Sutter Creek, CA 95685
Phone:	(916) 327-4838	Phone:	(209) 267-5647
Email:	Elvira.Reyes@waterboards.ca.gov	Email:	agedney@cityofsuttercreek.org

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division's Deputy Director.

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

- (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
- (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.
- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
- (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.

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

CITY OF SUTTER CREEK:

By: _____
Name: Amy Gedney
Title: City Manager

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

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

EXHIBIT A – SCOPE OF WORK AND SCHEDULE

A.1 PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient. The funding under this Agreement shall be used to evaluate alternatives to resolve outstanding violations, lack of storage and disposal capacity for the Recipient's Treatment Plant. The nearly 70- year-old facility is outdated, requires expensive maintenance, and many of its components need replacement or extensive rehabilitation. Most recently, the Recipient's agreement to send its reclaimed water to the City of Lone and store effluent in the Preston Reservoir will end July 2022, therefore new storage and disposal alternatives must be identified. Lastly, the feasibility of recycling water will also be evaluated to help alleviate outstanding issues.

A.2 SCOPE OF WORK.

The Recipient agrees to do the following:

ITEM	DESCRIPTIONS
1	Project Report
	<p>1.1. Prepare and submit a Technical Memorandum for the Central Valley Regional Water Quality Control Board that includes a present worth analysis of capital and operations and maintenance costs over a 20-year period for the following alternatives:</p> <p>1.1.1. Construction of secondary treatment plant and infrastructure improvements with continuation of existing land disposal and additional capacity to handle all secondary treated wastewater from Sutter Creek Wastewater Treatment Plant (WWTP);</p> <p>1.1.2. Regionalization with the City of Jackson WWTP, including necessary infrastructure and treatment system expansion. This could include transport to the City of Jackson WWTP for treatment and disposal or vice versa;</p> <p>1.1.3. Regionalization with the City of Lone WWTP, including necessary infrastructure and treatment system expansion for treatment, storage, and reuse/disposal at the City of Lone WWTP;</p> <p>1.1.4. Construction of a new tertiary treatment plant and infrastructure improvements in the City of Sutter Creek with year-round discharge to Sutter Creek;</p> <p>1.1.5. Construction of a new tertiary treatment plant and infrastructure improvements in the City of Sutter Creek with wet season discharge to Sutter Creek and dry season discharge to the existing Amador Regional Sanitation Authority (ARSA) system; and</p> <p>1.1.6. Construction of a new tertiary treatment plant and infrastructure improvements in the City of Sutter Creek with discharge to Sutter Creek only when 20:1 dilution is available and discharge to the existing ARSA system with less than 20:1 dilution.</p> <p>1.2. The Technical Memorandum shall include a summary of the discussions and any possible future collaboration from meetings with the City of Jackson and City of Lone. Information from the City of Sutter Creek's Wastewater Master Plan may be utilized to support the comparison of alternatives.</p> <p>1.3. Prepare and submit a Project Report that meets the Clean Water State Revolving Fund (CWSRF) and Water Recycling Funding Program (WRFP) requirements. Due to overlap in requirements, only one Project Report will be prepared, addressing all the items established in the CWSRF Project Report Requirements outlined in the CWSRF Construction application and WRFP requirements located in Appendix B (Recommended</p>

	<p>Outline for Recycled Water Project Reports) of the Water Recycling Funding Program Guidelines. The Project Report will also include Plans and Specifications (15%).</p> <p><i>ITEM 1 SUBMITTAL:</i></p> <p><i>a) Submit a Draft Project Report</i></p> <p><i>b) Submit a Final Technical Memorandum</i></p> <p><i>c) Submit a Final Project Report</i></p>
2	<p>Request for Qualifications (RFQ)/Request for Proposal (RFP) for Design-Build Project/Contractor Selection</p>
	<p>2.1. Prepare a RFQ document that contains the necessary information to facilitate the preparation of thorough Statement of Qualifications responses by the Design Build teams and prepare RFP documents to the level of completion necessary to enable the preparation of thorough and responsive proposal by short-listed Design Build teams.</p> <p>2.2. Evaluate proposals submitted and select the highest-ranked Design Build Team to complete the selected construction project.</p> <p><i>ITEM 2 SUBMITTAL</i></p> <p><i>a) Submit RFQ/RFP Final Documents</i></p>
3	<p>Rate Study/Proposition 218 Hearing</p>
	<p>3.1. Prepare a Rate Study to determine the sewer rates necessary to support the selected construction project and ongoing operation and maintenance cost required. Include Proposition 218 process, if necessary.</p> <p><i>ITEM 3 SUBMITTAL</i></p> <p><i>a) Submit Draft Rate Study</i></p> <p><i>b) Submit Final Rate Study</i></p>
4	<p>Project Administration</p>
	<p>4.1. Monitor project budgets and schedule, attend or run project meetings, and implement Quality Assurance/Quality Control. This task also includes communication with State Water Resources Control Board Project Manager regarding status updates, reimbursement requests, necessary project documents, and supplemental documents and submissions.</p> <p>4.2. Prepare and submit a CWSRF application for the selected construction project (includes General, Technical, Environmental and Financial packages and all necessary attachments to deem the application complete).</p> <p>4.3. Assist with National Pollutant Discharge Elimination System permit application. Prepare and submit Report of Waste Discharge which includes Antidegradation Analysis Study and Stream Bioassessment Study.</p> <p>4.4. Identify other required permits for the design and implementation phase of the selected construction project.</p> <p>4.5. Conduct required customary legal work for consultant and project construction contract review, environmental document review, and project permitting requirements.</p> <p><i>ITEM 4 SUBMITTAL</i></p> <p><i>a) Submit CWSRF Construction Application</i></p>

	<i>b) Submit Final Report of Waste Discharge</i>
5	Environmental Documentation
	<p>5.1. Develop California Environmental Quality Act (CEQA) and CEQA Plus required documents for the selected construction project and coordinate with State Water Board environmental staff and all other relevant agencies needed to prepare environmental documents.</p> <p><i>ITEM 5 SUBMITTAL</i></p> <p><i>a) Submit Draft Environmental Documents</i></p> <p><i>b) Submit Final Environmental Documents</i></p>

A.3 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to the Work Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
1	Project Report <ul style="list-style-type: none"> • Draft Project Report • Final Technical Memorandum • Final Project Report 	N/A N/A N/A	November 30, 2020 March 31, 2021 March 31, 2021
2	Preparation of RFP/RFQ for Design-Build Project/Contractor Selection <ul style="list-style-type: none"> • Final RFP/RFQ Documents 	N/A	April 30, 2021
3	Rate Study/Proposition 218 Hearing <ul style="list-style-type: none"> • Draft Rate Study • Final Rate Study 	N/A N/A	September 30, 2021 March 31, 2022
4	Project Administration <ul style="list-style-type: none"> • CWSRF Construction Application • Final Report of Waste Discharge 	N/A N/A	June 30, 2022 June 30, 2022
5	Environmental Documentation <ul style="list-style-type: none"> • Draft Environmental Documents • Final Environmental Documents 	N/A N/A	March 31, 2022 June 30, 2022
REPORTING			

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
	Status Report	Quarterly	
	As Needed Information or Reports	As Needed	
	FUNDING PROVISIONS		
	Reimbursement Request	As Needed	
	Final Reimbursement Request	September 30, 2023	

The Recipient must deliver any request for extension of the Work Completion Date no less than 90 days prior to the Work Completion Date.

The Division may require corrective work to be performed prior to Project Completion. Any work occurring after the Work Completion Date will not be reimbursed under this Agreement.

A.4 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each reimbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, amount budgeted, amount spent, and percent completion for each task;
- 2) Statement indicating if all critical due dates are on track;
- 3) Statement indicating if all deliverable due dates are on track;
- 4) A description of compliance with any special conditions; and
- 5) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.5 DRAFT PROJECT REPORT.

The Recipient must submit a draft Project Report consistent with the Scope of Work above to the Division with a copy to the appropriate Regional Water Board on or before the due date established by the Division and the Recipient.

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

A.6 FINAL PROJECT REPORT.

The Recipient must submit a Final Project Report consistent with the Scope of Work above to the Division with a copy to the appropriate Regional Water Board on or before the due date established by the Division and the Recipient in advance of the Final Disbursement Request Date.

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

EXHIBIT B – SPECIFIC FUNDING PROVISIONS

B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement.

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

B.2 RECIPIENT CONTRIBUTIONS.

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

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

B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

B.4 BUDGET COSTS

Budget costs are contained in the Summary Project Cost Table below:

ITEM	DESCRIPTION	BUDGET AMOUNT
1	Project Report ¹	\$165,000
2	RFP/RFQ for Design-Build Product/Contractor selection	\$60,000
3	Rate Study/Proposition 218 Hearing	\$48,000
4	Project Administration	\$127,000
5	Environmental Documentation (CEQA & CEQA Plus)	\$100,000
	Total ¹	\$500,000

Notes: ¹WRFP Grant Funds will be disbursed in accordance with the WRFP Guidelines Section Section III.

Funds may be shifted between eligible line items as approved by the Division, at the time of the Recipient's submittal of its final claim. The sum of adjusted line items must not exceed the total budget amount

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark ups to costs invoiced or otherwise requested by consultants or contractors.

Reasonable indirect costs may be allowable upon approval by the Division.

The Grant Component of this Agreement may only be used to reimburse Project Costs eligible for water recycling planning funding under Section III of the State Water Board's Water Recycling Funding Program Guidelines. The Recipient must submit the Final Project Report before the final ten percent (10%) of the Grant Component may be disbursed.

B.5 REIMBURSEMENT PROCEDURE.

Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred costs through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of Reimbursement Request. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Division may withhold disbursements where costs incurred do not reflect actual time spent.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
7. The Recipient shall not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
8. The Recipient must submit all draft deliverables prior to reimbursement beyond 70 percent of the Project Funding Amount, and it must submit all final deliverables to the Division prior to reimbursement beyond 90 percent of the Project Funding Amount.
9. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

B.6 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement timely, any remaining funds revert to the State. The State Water Board may notify the Recipient that

the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

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

EXHIBIT D – SPECIAL CONDITIONS

D.1 DEFINITIONS.

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

- "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
- "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any costs may be incurred and eligible for reimbursement hereunder.
- "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;
 - c) The occurrence of a material breach or event of default under any System obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- "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.
- "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
- "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.
- "Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

- "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 wastewater, water recycling, and/or potable water collection, pumping, transport, treatment, storage, and disposal 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.

D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

- (a) The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.
- (b) The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
- (c) The execution, delivery, and performance by 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.
- (j) 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.

D.3 TECHNICAL SPECIAL CONDITIONS.

- (a) Written approval from the State Water Resources Control Board Project Manager is required prior to performing work on the Plan and Specifications, RFQ/RFP and Environmental Documents.
- (b) This Agreement is only for planning and design costs. If the Recipient intends to request funding for construction costs, a complete construction application must be submitted and approved prior to any construction.

D.4 ACKNOWLEDGEMENTS.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

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

D.5 RATES, FEES, AND CHARGES.

- (a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement.
- (b) The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

D.6 NOTICE.

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) Within 24 hours, the Recipient must notify the Party Contacts by phone and by email, and also notify the Division by phone at (916) 327-9978 and by email to CleanWaterSRF@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 and Party Contacts promptly of the occurrence of any of the following events:
 - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
 - iii. Loss, theft, damage, or impairment to Project;
 - iv. Events of Default, except as otherwise set forth in this section;
 - v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
 - vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
 - vii. Consideration of dissolution, or disincorporation;
 - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
 - ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Work Completion for a period of ninety (90) days or more;

- xii. Any 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. Work Completion, and Project Completion.

D.7 RETURN OF FUNDS.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, to immediately return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement and pay interest at the highest legal rate on all of the foregoing.

D.8 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.

D.9 FRAUD, WASTE, AND ABUSE.

The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to Reimbursement Requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in 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.

D.10 DISPUTES.

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

the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

D.11 STATE CROSS-CUTTERS.

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

- The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
- The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.

D.12 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.

D.13 ACCESS AND INSPECTION.

In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.

D.14 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.

D.15 FEDERAL CROSS-CUTTERS.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient does not anticipate any construction is necessary to complete the Project, and no construction activities may occur without the Division's approval. If the Project does include construction, the Recipient agrees to comply with the Davis-Bacon provisions, and must include in full the Wage Rate Requirements (Davis-Bacon) language provided by the Division in all construction contracts and subcontracts.
- iii. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- iv. The Recipient shall comply with applicable USEPA general terms and conditions found at <http://www.epa.gov/ogd>.
- v. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.

- vi. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- vii. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- viii. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- ix. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- x. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Acknowledgement statement set forth in Exhibit D.
- xi. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xii. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- xiii. The Recipient certifies to the best of its knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into

of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks reimbursement under this Agreement.

- xiv. The Recipient must comply with the following federal non-discrimination requirements:

- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- c. The Age Discrimination Act of 1975, which prohibits age discrimination.
- d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- e. 40 CFR Part 7, as it relates to the foregoing.

- xv. If the Project relates to construction of a publicly owned treatment works, where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.

- xvi. If the Project relates to construction of a publicly owned treatment works, the Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.

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

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

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

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

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

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

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

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

- xviii. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
- xix. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- xx. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.

- xxi. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxii. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxiii. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxiv. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxv. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with USEPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxvi. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, USEPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the USEPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in USEPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.
- xxvii. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.