



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

August 28, 2017

Jason Dow
Central Marin Sanitation District
130 Anderson Drive
San Rafael, CA 94901-5339

CENTRAL MARIN SANITATION DISTRICT, AGREEMENT NUMBER: D17-01005; PROJECT NUMBER:
C-06-8285-110

Dear Mr. Dow,

Enclosed is your Planning Agreement for your approval and signature. This Agreement cannot be considered binding by either party until approved by the State Water Resources Control Board. The State is not obligated to make any payments for services performed prior to final approval of any Agreement.

If the District is in agreement with all terms and conditions of the Agreement, please sign and date two (2) signature pages. In addition, please provide the executed General Counsel Legal Opinion letter, which must be dated on or after the District executes the Agreement and return no later than thirty (30) calendar days from the date of this letter to:

US Mail

Ms. Amor Moskaira, Contract Analyst
State Water Resources Control Board
Division of Financial Assistance
P.O. Box 944212
Sacramento, CA 94244-2120

Overnight Mail

Ms. Amor Moskaira, Contract Analyst
State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 16th Floor
Sacramento, CA 95814

Expeditious handling of this Agreement is appreciated. Please contact Ms. Moskaira at (916) 449-5627 or Amor.Moskaira@waterboards.ca.gov.

Once final approval is obtained, we will forward you an executed copy for your records.

Enclosure



CENTRAL MARIN SANITATION DISTRICT

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



PLANNING LOAN (100% PF)

RENEWABLE ENERGY EXPANSION PROGRAM

PROJECT NO. C-06-8285-110

AGREEMENT NO. D17-01005

AMOUNT: \$500,000

ELIGIBLE START DATE: OCTOBER 11, 2016

WORK COMPLETION DATE: MARCH 1, 2019

FINAL DISBURSEMENT REQUEST DATE: SEPTEMBER 1, 2019

END OF FUNDING PERIOD DATE: JUNE 1, 2019

RECORDS RETENTION END DATE: SEPTEMBER 1, 2055

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WHEREAS,

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

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

1. Definitions.

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

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

"Agreement" means this Planning Loan, including all exhibits and attachments hereto.

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

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

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer the SRF and Prop 1.

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

"End of Funding Period" means the date, as determined by the Division, that the Planning is complete to the reasonable satisfaction of the Division and is the last date on which Planning Costs may be incurred. Work occurring after End of Funding Period is not eligible for reimbursement under this Agreement.

"Event of Default" means the occurrence of any of the following events: (a) any representation or warranty made by the Recipient under this Agreement proves to be incorrect in any material respect, (b) the

Recipient's failure to observe or perform any financial covenant, condition, or agreement contained in this Agreement, (c) the failure of the Recipient to perform any other covenant or condition under this Agreement and such failure shall remain unremedied for a period of 2 days for requirements under section 5 of this Agreement, and 30 days with respect to other requirements, covenants, or conditions, unless expressly waived by the Division, (d) the failure of the Recipient to keep in full force and effect its legal existence (e) initiation of proceedings seeking liquidation, reorganization, or other relief with respect to the Recipient or its debts, or for the appointment of a receiver, trustee, custodian or conservator with Respect to the Recipient or any part of its assets, or similar event, (f) the failure of the Recipient to make any payment with respect to any System obligation, when such becomes due and payable, and such failure continuing or anticipated to continue beyond any applicable grace period, (g) any event or condition occurs that results in the acceleration of any System obligation, or of such System obligation becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any System obligation or any trustee or agent on its or their behalf to cause any System obligation to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, (h) initiation of litigation related to the Revenues, the System, or the Project, or (i) a material adverse change in the business, operations, or condition (financial or otherwise) of Recipient.

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

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

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

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

"GAAP" means generally accepted accounting principles, 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.

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

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

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

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

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

"Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Project Manager.

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

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

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

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

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

"Recipient" means Central Marin Sanitation District.

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

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

"SRF" means the Clean Water State Revolving Fund.

"State" means State of California.

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

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

hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

“Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A for review and approval by the Division. The Division may require corrective work to be performed prior to End of Funding Period.

“Work Completion Date” means the date set forth in Exhibit A that is the last date on which all work or submittals in Exhibit A-5 must be achieved.

“Year” means calendar year unless otherwise expressly indicated.

2. Party Contacts.

The Party Contacts during the term of this Agreement are:

State Water Board	Recipient
Section:	
Name: Bob Pontureri, Senior Project Manager	Name: Jason Dow
Address: 1001 I Street	Address: 1301 Anderson Drive
City, State, Zip: Sacramento, CA 94244-2120	City, State, Zip: San Rafael, CA 94901-5339
Phone: (916) 341-5828	Phone: (415) 459-1455
Email: Robert.Pontureri@waterboards.ca.gov	Email: jdow@cmsa.us

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

3. Exhibits and Appendices Incorporated.

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

- EXHIBIT A - SCOPE OF WORK
- EXHIBIT B - FUNDING PROVISIONS
- EXHIBIT C – STANDARD TERMS AND CONDITIONS
- EXHIBIT D – SPECIAL CONDITIONS
- EXHIBIT E – FEDERAL TERMS AND CONDITIONS

Additionally, the following documents are incorporated by reference:

- (a) The Recipient's Plan of Study dated August 8, 2016.

4. Recipient Representations and Commitments.

The Recipient represents, warrants, and commits to the following as the Eligible Start Date and continuing thereafter for the term of this Agreement:

- (a) General Commitments. The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance and throughout the term of this Agreement.
- (b) Authorization and Validity. The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.
- (c) No Violations. The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the first page hereof

- (d) No Litigation. There are no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Planning.
- (e) Solvency and Insurance. None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. As of the date set forth on the first page hereof, Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. Recipient is able to pay its debts as they become due. 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 employers liability, professional liability.
- (f) Legal Status and Eligibility. Recipient is duly organized and existing and in good standing under the laws of the State of California, and will remain so during the term of this Agreement. Recipient shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Recipient shall maintain its eligibility for funding under this Agreement for the term of this Agreement.
- (g) Financial Statements and Continuing Disclosure. The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board. The Recipient is current in its continuing disclosure obligations associated with its material debt.
- (h) Good Standing. The Recipient is currently in compliance with the state requirements set forth in Exhibit C and the federal requirements set forth in Exhibit E. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with previous state audit disallowances.

5. End of Funding Period.

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

6. Notice.

- (a) The Recipient shall notify the Division in writing within five (5) working days of the occurrence of the following:
 - (1) Bankruptcy, insolvency, receivership or similar event of the Recipient;
 - (2) Actions taken pursuant to state law in anticipation of filing for bankruptcy;
 - (3) Other Material Events or Events of Default, except as set forth in subdivisions (b) or (c) of this section;

- (b) The Recipient shall notify the Division within 10 working days of any litigation pending or threatened against Recipient regarding its wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution,
- (c) The Recipient shall notify the Division promptly of the following:
 - (1) Any proposed change in scope of the Planning. Most changes will require an amendment to this Agreement;
 - (2) Cessation of work on the Planning where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Work Completion for a period of ninety (90) days or more beyond the estimated date previously provided to the Division;
 - (4) Any monitoring activities such that the State Water Board Division of Drinking Water and/or Regional Water Quality Control Board staff may observe and document such activities;
 - (5) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division; or
 - (6) Work Completion, and End of Funding Period.

7. No Obligation of the State; State Budget Act Contingency.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys appropriated by the State Legislature to the State Water Board from the special fund associated with this Agreement.

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

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

8. Rates, Fees and Charges; Liens.

The Recipient agrees, to the extent permitted by law, to fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues in the amounts necessary to cover Operations and Maintenance Costs, and 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.

The Recipient shall not make any pledge of or place any lien on Revenues and shall not make any pledge of or place any lien on Revenues except with the consent of the Division.

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

CENTRAL MARIN SANITATION DISTRICT:

By: _____
Name: Jason Dow
Title: General Manager

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

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

Date: _____

EXHIBIT A – SCOPE OF WORK

A-1. Completion Dates.

The Work Completion Date is established as March 1, 2019. The End of Funding Period date is established as June 1, 2019. The Recipient shall deliver any request for extension of the Work Completion date no less than 90 days prior to the Work Completion date. The Division will not unreasonably deny such a timely request, but the Division may deny requests received after this time.

A-2. Purpose.

The Recipient is seeking \$500,000 in Principal Forgiveness (PF) funding available to projects that meet the Green Project Reserve (GPR) requirements of the CWSRF program for planning. The planning project will allow the Recipient to investigate increasing biogas generation by accepting additional organic waste to comply with California's organic waste diversion law (AB1826). The increased organic loading will allow more power generation onsite to offset electrical cost at the facility and provide any excess energy production to be sold back to the electrical grid.

The planning project will include an analysis to maximize biogas production and determine the feasibility of constructing additional power generation capacity at the Recipient's wastewater treatment plant's Organic Waste Receiving Facility (OWRF). The planning project will include work as described in the scope of work tasks detailed below:

A-3. Scope of Work.

The Recipient agrees to do the following:

1. Develop a Technical Memorandum summarizing biogas production rates and utilization options (\$55,773)
 - a. Task 1 includes an evaluation of biogas generation capability of the existing digesters and the breadth of the analysis will include identifying beneficial uses of the biogas. Evaluate the technical and regulatory feasibility of expanding the cogeneration system, installing a biomethane fueling station for vehicles, or injecting biomethane into a local utility pipeline, or potential multiple uses such as a smaller size generator and fueling station.
 - *Technical Memorandum summarizing biogas production rates and utilization options.*
2. Develop Organic Waste Receiving Facility Report (\$44,800)
 - a. Task 2 evaluates the existing digester capacity and feasible organic loading rates to estimate the volume of food waste and liquid organic wastes that the Agency could receive to fully utilize that capacity of the OWRF. Preliminary site layouts and conceptual cost estimates for feasible expansion alternatives will also be provided in the evaluation.
 - *OWRF Engineering Report*
3. Develop Solar Power Generation Analysis Report (\$23,143)
 - a. Task 3 will determine the sizing of the photovoltaic (PV) systems, include analysis of location alternatives of PV system, and evaluate regulatory limitations with exporting biogas-generated and solar-derived power, system capital costs, and financing options.
 - *Solar power generation analysis Task Report*

EXHIBIT A – SCOPE OF WORK

4. Biosolids Management Alternative Analysis Report (\$65,720)
 - a. Task 4 will identify and assess potential regulatory changes that impact the biosolids management alternatives evaluation. The report will include capital and life cycle costs for each of the biosolids handling alternatives.
 - *Biosolids management options analysis Task Report*
5. Power/Biogas Sales Opportunities Analysis Report (\$49,500)
 - a. Task 5 includes the development and analysis of the different biogas/power sales opportunities.
 - *Power/biogas sales opportunities analysis Task Report.*
6. Economic Modeling Analysis (\$15,750)
 - a. Task 6 will develop, a lifecycle economic model of the project that includes capital costs, operations costs, financing costs, return on investment, revenues, and tipping fees for organic waste delivered to the facility.
 - *Economic analysis Task Report.*
7. CEQA/NEPA Environmental Review Determination/Analysis (\$93,500)
 - a. Task 7 conduct an initial assessment of the Project, identifying the potential environmental impacts from the Project and determining their level of significance. Determine the appropriate process for CEQA compliance and prepare the necessary environmental documentation.
 - Initial environmental review and process recommendation
 - Preparation of the appropriate CEQA/CEQA plus document
8. Air Quality and Other Permit Analysis (\$89,250)
 - a. Task 8 will analyze the project related processes and equipment to determine the permitting requirements of the Bay Area Air Quality Management District and other applicable regulatory agencies.
 - BAAQMD permitting and rule analysis. BAAQMD permit(s) required to construct the Project. GHG/CO₂e impact analysis of the proposed project
9. Financing Plan Analysis (\$15,750)
 - a. Task 9 will review available capital financing sources including CWSRF, Agency reserves and available grants and prepare a recommended financing plan.
 - *Capital Financing Report*
10. PG&E Interconnection Agreement (IA) Modification (\$103,125)
 - a. Task 10 will prepare an Interconnection Agreement application(s) and carry out the steps as defined by the California Public Utility Commission to obtain an IA that allows export of the excess renewable power for sale to PG&E or MCE. If renewable biogas is also to be produced, we will research the requirements to interconnect with the PG&E pipeline.
 - *Modified IA from PG&E*
11. Obtain California Energy Commission (CEC) Renewable Portfolio Standard (RPS) Certification for the Project (\$15,750)
 - a. Task 11 Agency to obtain certification from the California Energy Commission to sell renewable energy to PG&E.
 - *RPS Certification from CEC*

EXHIBIT A – SCOPE OF WORK

12. Prepare Report of Findings, Conclusions, Recommendations & Action Plan (\$21,200)

- a. Task 12 Develop a clear set of findings, conclusions and recommendations for consideration by Agency's Executive Staff and Board. An action plan will be prepared identifying all remaining key steps and decisions required to implement the project. Timelines and budgets for each activity will be developed and responsibilities assigned.
 - *Task report presenting findings, conclusions, recommendations and Action Plan*

13. Draft and Final Report for CWSRF on the Recommended Project (\$73,598)

- a. Task 13 the individual Task reports will be consolidated into a draft final report and circulated amongst the stakeholders. All relevant comments will be incorporated into a final Project Report. The Project Report will be structured in volumes coinciding with CWSRF design/construction financial assistance protocol, covering general, technical, environmental and financial required submittal information.
 - *CWSRF Monthly progress reports,*
 - *Draft Study Reports.*
 - *Final Study Reports*

A-4. Disclosure.

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

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

A-5. Reporting.

- (a) Status Reports. The Recipient agrees to expeditiously provide progress reports pursuant to the schedule(s) in Exhibit A and/or Exhibit B and no less frequently than quarterly, starting with execution of this Agreement. Such reports shall accompany any disbursement request and shall be a condition precedent to any disbursement. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent complete, percent invoiced, and percent schedule elapsed; any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) As Needed Information or Reports. The Recipient agrees to provide expeditiously, during the term of this Agreement, such reports, data, and information as may be 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

EXHIBIT A – SCOPE OF WORK

A-6. Planning Schedule

The dates in the “Estimated Due Date” column of this Schedule may be adjusted as necessary during the Disbursement Period with Project Manager approval. However, all work or submittals must be achieved with relevant submittals approved by the Division, and the final invoice submitted, prior to the Final Disbursement Request Date set forth in Exhibit B.

Recipient Milestones	Draft ¹	Final ¹
Eligible Start Date	N/A	10/11/2016
Development of a Technical Memorandum summarizing biogas production rates and utilization options	7/1/2017	9/1/2017
Develop Organic Waste Receiving Facility Report	7/1/2017	9/1/2017
Develop Solar Power Generation Analysis Report	7/1/2017	9/1/2017
Biosolids Management Alternative Analysis Report	7/1/2017	9/1/2017
Power/Biogas Sales Opportunities Analysis Report	7/1/2017	9/1/2017
Economic Modeling Analysis	7/1/2017	9/1/2017
CEQA/NEPA Environmental Review Determination/Analysis	4/1/2018	6/1/2018
Air Quality and Other Permit Analysis	N/A	8/1/2018
Financing Plan Analysis	10/1/2017	12/1/2017
PG&E Interconnection Agreement Modification	9/1/18	11/1/18
Obtain CEC Renewable Portfolio Standard (RPS) Certification for the Project	N/A	11/1/18
Prepare Report of Findings, Conclusions, Recommendations & Action Plan	N/A	12/1/18
Draft and Final Report for CWSRF on the Recommended Project	12/1/18	3/1/19
Final Disbursement Request/End of Draw	N/A	9/1/2019
¹ These are estimated dates, which may be adjusted as necessary during the draw period. However, all milestones must be achieved with relevant deliverables approved by the Division, and the final invoice submitted, prior to End of Draw date. End of Draw date must be within 3 years from the execution date of this Agreement, unless the Deputy Director of the Division or designee approves an extension for good cause.		

EXHIBIT B – FUNDING PROVISIONS

B-1. Planning Funding.

- (a) Subject to the terms of this Agreement, the State Water Board agrees to provide Planning Funds in the amount of up to five hundred thousand dollars and zero cents (\$500,000.00)
- (b) Of the amount set forth in paragraph (a), the State Water Board forgives principal up to five hundred thousand dollars and no cents (\$500,000.00).

B-2. Estimated Reasonable Planning Cost.

The estimated reasonable cost of the total Planning is six hundred sixty-six thousand eight hundred fifty-nine dollars and no cents (\$666,859.00).

B-3. Funding Dates.

- (a) The term of this agreement is from the Eligible Start Date on the cover page of this Agreement to the End Date of September 1, 2055.
- (b) The Eligible Start Date is October 11, 2016. Otherwise eligible costs incurred prior to this date will not be reimbursed.
- (c) The Final Disbursement Request Date is September 1, 2019. The Deputy Director of the Division may extend this date for good cause. Extensions may require an amendment to this Agreement. All disbursement requests must be submitted to the Division such that they are received prior to this date. Late disbursement requests will not be honored and remaining amounts will be deobligated.

B-4. [Reserved.]

B-5. Funding Conditions and Exclusions.

- (a) This Agreement reflects Planning funding only. If the Recipient desires implementation/construction funding, the Recipient must complete the planning process, apply for implementation/construction funding, and execute an implementation/construction funding agreement. Costs associated with the implementation/construction phase of the possible eventual implementation/construction project are not eligible for reimbursement under this Agreement.
- (b) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.
- (c) A draft copy of the Planning documents acceptable to the Division shall be submitted to the Division prior to disbursement beyond 70% of the Planning Funds. Final Planning documents shall be submitted, acceptable to the Division, prior to disbursement beyond 90% of the Planning Funds.

EXHIBIT B – FUNDING PROVISIONS

B-6. Budget Summary

Task Number	Task Description	Budget Amount
1	Development of a Technical Memorandum summarizing biogas production rates and utilization options	\$55,773
2	Develop Organic Waste Receiving Facility Report	\$44,800
3	Develop Solar Power Generation Analysis Report	\$23,143
4	Biosolids Management Alternative Analysis Report	\$65,720
5	Power/Biogas Sales Opportunities Analysis Report	\$49,500
6	Economic Modeling Analysis	\$15,750
7	CEQA/NEPA Environmental Review Determination/Analysis	\$93,500
8	Air Quality and Other Permit Analysis	\$89,250
9	Financing Plan Analysis	\$15,750
10	PG&E Interconnection Agreement Modification	\$103,125
11	Obtain CEC Renewable Portfolio Standard (RPS) Certification for the Project	\$15,750
12	Prepare Report of Findings, Conclusions, Recommendations & Action Plan	\$21,200
13	Draft and Final Report for CWSRF on the Recommended Project	\$73,598
	Total Estimated Costs	\$666,859
	CWSRF Eligible Costs	\$666,859
	CWSRF GPR @75% Principle Forgiveness	\$500,144
	Total Eligible CWSRF Funding - Principle Forgiveness	\$500,000*

B-7. Budget Flexibility.

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

B-8. Amounts Payable by the Recipient.

- (a) Planning Costs. The Recipient agrees to pay any and all costs connected with the Planning including, without limitation, any and all Planning Costs. If the Planning Funds are not sufficient to pay the Planning Costs in full, the Recipient shall nonetheless complete the Planning and pay that portion of the Planning Costs in excess of available Planning Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (b) Additional Payments. The Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, consultants,

EXHIBIT B – FUNDING PROVISIONS

contractors, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

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

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

- (a) The State Water Board's obligation to disburse Planning Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Planning Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other recipient. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to the Recipient to reflect the reduced amount.
- (b) Except as may be otherwise provided in this Agreement, disbursement of Planning Funds will be made as follows:
 - (1) Upon execution and delivery of this Agreement, the Recipient may request disbursement for eligible Planning Costs as specified in this Exhibit from the Planning Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
 - (2) Requests must be complete and executed by the Recipient. Planning Costs incurred prior to the Eligible Start Date of this Agreement will not be funded. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
 - (3) Additional Planning Funds must be requested monthly and will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due. Late disbursement requests may not be honored.
 - (4) The Recipient agrees that it will not request disbursement for any Planning Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request. Supporting documentation (e.g., receipts) must be submitted with each disbursement request as well as to support Match Funds claimed, if any. The amount requested for administration costs must include a calculation formula (i.e., hours or days

EXHIBIT B – FUNDING PROVISIONS

worked times the hourly or daily rate = total amount claimed). Disbursement of Planning Funds will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed disbursement request.

- (5) The Recipient will not seek reimbursement of any Planning Costs that have been reimbursed from other funding sources.
- (6) Recipient shall spend Planning Funds within 30 days of receipt. Any interest earned on Planning Funds shall be reported to the State Water Board and will either be required to be returned to the State Water Board or deducted from future disbursements. In the event that the Recipient fails to disburse Planning Funds to contractors or vendors within thirty (30) days from receipt of the funds, the Recipient shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Recipient held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
- (7) Recipient shall request its final disbursement no later than the Final Disbursement Request Date specified herein unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
- (8) The Recipient agrees that it will not request a disbursement unless that cost is allowable, reasonable, and allocable.
- (9) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner that is in violation of or in conflict with federal or state laws, policies, or regulations.
- (10) The Recipient agrees that it shall not be entitled to interest earned on undisbursed Planning Funds.
- (11) Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Recipient. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Division.
- (12) The Recipient must include a certified original of the authorizing resolution designating the Authorized Representative by title with the first disbursement request, and any other documents or requests required or allowed under this Agreement.

B-10. Withholding of Disbursements and Material Violations.

- (a) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Planning Funds until End of Funding Period. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon End of Funding Period.
- (b) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:

EXHIBIT B – FUNDING PROVISIONS

- (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - (2) The Recipient fails to maintain reasonable progress.
- (c) For the purposes of this Agreement, the terms “material violation” or “threat of material violation” include, but are not limited to:
- (1) Placement on the ballot of an initiative or referendum to reduce Revenues;
 - (2) Passage of such an initiative or referendum;
 - (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure Revenues; or
- (1) Any other action or lack of action that may be construed by the Division as a material violation or threat thereof.

B-11. Remaining Balance.

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

B-12. Fraud and Misuse of Public Funds.

All requests for disbursement submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Recipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of Planning Funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General’s Office or the appropriate district attorney’s office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-1. Accounting and Auditing Standards.

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

C-2. Amendment.

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

C-3. Assignability.

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

C-4. Audit.

- (a) The Division, at its option, may call for an audit of financial information relative to the Planning, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of state or federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.
- (b) Audit disallowances will be returned to the State Water Board. Failure to comply with audit disallowance provisions shall disqualify the Recipient from participating in State Water Board funding programs.

C-5. [Reserved.]

C-6. Claims.

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

C-7. Competitive Bidding

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

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

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

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the State Water Board's Policy;

EXHIBIT C – STANDARD TERMS AND CONDITIONS

- (c) Comply with and require compliance with the list of state laws (cross-cutters) in Section C-31 of this Agreement.
- (d) Comply with and require its contractors and subcontractors to comply with the list of federal laws (cross-cutters) attached as Exhibit E.

C-9. Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance, and shall remain compliant through End of Funding Period, with applicable state and federal conflict of interest laws, including but not limited to laws related to conflict of interest laws related to contracting and procurement.

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

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

C-11. Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.
- (d) This section does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-12. Financial Management System and Standards.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal or state government and tracking of Planning Funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient agrees to be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133, and 2 CFR Part 200, subpart F, and updates or revisions, thereto. (Pub. L. 98-502.)

C-13. Governing Law.

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

C-14. Income Restrictions.

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

C-15. Indemnification and State Reviews.

The parties agree that review or approval of Planning documents by the State Water Board is for administrative purposes only, 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 engage in proper planning. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, and its officers, employees, and agents (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Planning or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Planning or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient shall 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 shall cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of

EXHIBIT C – STANDARD TERMS AND CONDITIONS

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 shall survive the term of this Agreement.

C-16. Independent Actor.

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

C-17. Integration.

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

C-18. Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- (b) The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subs. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C-19. No Third Party Rights.

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

C-20. Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during its useful life in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System 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) as are usually covered in connection with

EXHIBIT C – STANDARD TERMS AND CONDITIONS

systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund funded 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 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. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens.

Recipient agrees that for any policy of insurance concerning or covering the construction related to this Planning, 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 shall provide the Division with a copy of all such certificates prior to the commencement of construction associated with this Planning.

C-21. Other Assistance.

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

C-22. Permits, Contracting, Disqualification.

The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. Recipient shall procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

The Recipient shall not contract or allow subcontracting with excluded parties. The Recipient shall 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 shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml.

C-23. Public Records.

The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Planning records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated by reference into this Agreement, and all reports, disbursement requests, and supporting documentation submitted hereunder.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-24. Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

C-25. Professionals.

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

C-26. Public Funding.

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

C-27. Recipient's Responsibility for Work.

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

C-28. Records.

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

- (a) Establish an official file for the Planning which shall adequately document all significant actions relative to the Planning;
- (b) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Planning, including all assistance funds received under this Agreement;
- (c) Establish separate accounts which will adequately depict all income received which is attributable to the Planning, specifically including any income attributable to assistance funds disbursed under this Agreement;
- (d) Establish an accounting system, which will accurately depict final total costs of the Planning, including both direct and indirect costs. Indirect Costs are not eligible for funding under this Agreement;

EXHIBIT C – STANDARD TERMS AND CONDITIONS

- (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 Force Account is used by the Recipient for the Planning, accounts will be established which reasonably document all employee hours charged to the Planning and the associated tasks performed by each employee.
- (g) Maintain separate books, records and other material relative to the Planning.
- (h) Retain such books, records, and other material for itself and for each contractor or subcontractor who performed work on this Planning for a minimum of three (3) years after Work Completion. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall allow and shall 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 right regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section shall survive the term of this Agreement.

C-29. Related Litigation.

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

C-30. Rights in Data.

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

C-31. State Cross-Cutter Compliance.

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

- (a) State Water Board's Drought Emergency Water Conservation regulations. Title 23, article 22.5 of the California Code of Regulations. The Recipient will include a discussion of its implementation in Status Reports submitted pursuant to this Agreement.

EXHIBIT C – STANDARD TERMS AND CONDITIONS

- (b) California Environmental Quality Act (CEQA). Implementation and construction activities must comply with CEQA and potentially other environmental review requirements, including the National Environmental Policy Act (NEPA). Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
- (c) Water Code section 5103, subdivision (e)(2)(A). If Recipient is a water diverter, Recipient must maintain compliance by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.
- (d) Labor Code sections 1725.5 and 1771.1. To bid for public works contracts, Recipient acknowledges that Recipient and Recipient's subcontractors must register with the Department of Industrial Relations.
- (e) Water Code sections 526 and 527. If Recipient is an urban water supplier as defined by Water Code, it shall have complied and maintain compliance with sections 526 and 527 of the Water Code relating to installation of meters and volumetric charging.
- (f) Urban Water Management Planning Act (Water Code, § 10610 et seq.). If Recipient is an "urban water supplier" as defined by Water Code section 10617, the Recipient certifies that it has submitted an Urban Water Management Plan that has been deemed complete by the Department of Water Resources and is in compliance with that plan. This shall constitute a condition precedent to this Agreement.
- (g) Urban Water Demand Management Water Code. If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must comply with water conservation measures established by SBx7-7. (Water Code, Sec. 10608.56.)
- (h) Delta Plan Consistency Findings. Water Code section 85225 and California Code of Regulations, title 23, section 5002. If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient will submit a certification of project consistency with the Delta Plan to the Delta Stewardship Council prior to undertaking the implementation/construction project associated with this Planning.
- (i) Agricultural Water Management Plan Consistency. A Recipient that is an agricultural water supplier as defined by section 10608.12 of the Water Code must comply with the Agricultural Water Management Planning Act. (Wat. Code, § 10800 et seq.)
- (j) Charter City Project Labor Requirements. Labor Code section 1782 and Public Contract Code section 2503:

(1) Prevailing Wage

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

EXHIBIT C – STANDARD TERMS AND CONDITIONS

(2) Labor Agreements

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

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

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

C-33. Termination; Immediate Acceleration; Interest.

- (a) This Agreement may be terminated at any time prior to the End Date set forth on the cover and in Exhibit B, at the option of the State Water Board, upon violation by the Recipient of any Event of Default after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Planning Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.

C-34. Timeliness.

Time is of the essence in this Agreement.

C-35. Unenforceable Provision.

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

C-36. Venue.

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

EXHIBIT C – STANDARD TERMS AND CONDITIONS

C-37. Waiver and Rights of the State Water Board.

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

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

EXHIBIT D — SPECIAL CONDITIONS

Financial Special Conditions as follows:

Recipient shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs; and to meet covenants and requirements of Recipient's outstanding System obligations.

EXHIBIT E – FEDERAL CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

A. Federal Award Conditions

1. American Iron and Steel. [Reserved - Planning.]
2. Wage Rate Requirements (Davis-Bacon). [Reserved - Planning.]
3. Signage/Awareness Requirements. The Recipient shall comply with the USEPA's Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, dated June 3, 2015, as otherwise specified in this Agreement.
4. Public or Media Events. The Recipient shall notify the State Water Board and the EPA contact as provided in the notice provisions of this Agreement of public or media events publicizing the accomplishment of significant events related to this Planning and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
5. EPA General Terms and Conditions (USEPA GTCs). The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:
 - a. DUNS. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
 - b. Executive Compensation. The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, as set forth in the USEPA GTCs.
 - c. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall certify that it and its principals, and shall obtain certifications from its contractors that they and their principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - ii. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the foregoing paragraph; and;

EXHIBIT E – FEDERAL CONDITIONS & CROSS-CUTTERS

- iv. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
- v. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
- d. Conflict of Interest. 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.
- e. Copyright and Patent. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- f. Credit. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document.”
- g. Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Planning.
- h. Trafficking in Persons. The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement and full

EXHIBIT E – FEDERAL CONDITIONS & CROSS-CUTTERS

payment will be due immediately, if a Recipient or subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

B. Super Cross-Cutters - Civil Rights Obligations. The Recipient must comply with the following federal non-discrimination requirements:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- The Age Discrimination Act of 1975, which prohibits age discrimination.
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- 40 CFR Part 7, as it relates to the foregoing.
- Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Planning the following provisions:

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

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

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

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

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

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

EXHIBIT E – FEDERAL CONDITIONS & CROSS-CUTTERS

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

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

C. WRRDA Conditions

- Architectural and engineering contracts. Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- Fiscal sustainability. [Reserved – Planning.]

D. Cross-Cutters

- a) Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)
- b) 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/>.
- c) 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.

EXHIBIT E – FEDERAL CONDITIONS & CROSS-CUTTERS

- d) Debarment and Suspension Executive Order No. 12549 (1986). The Recipient certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Planning. Contractors on the Planning must provide a similar certification prior to the award of a contract and subcontractors on the Planning must provide the general contractor with the certification prior to the award of any subcontract.
- e) 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.

E. Geospatial Data Standards

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.

F. DAVIS-BACON – [Reserved for Planning.]

