

**IMPLEMENTATION AGREEMENT BETWEEN  
BAY AREA CLEAN WATER AGENCIES AND  
[PROJECT SPONSOR]**

THROUGH THIS IMPLEMENTATION AGREEMENT (“Implementation Agreement”), entered into by and between Bay Area Clean Water Agencies (“BACWA”), a Joint Powers Authority existing under the laws of the State of California, and       (Project Sponsor)      , a       (describe type of organization, i.e., public agency, non-profit organization)      , in the County(ies) of       (enter county names)      , State of California, duly organized, existing, and acting pursuant to the laws thereof, (“Project Sponsor”), the parties hereby agree as follows:

A. WHEREAS, BACWA is a Joint Powers Authority existing under the laws of the State of California and consisting of various wastewater agencies in the San Francisco Bay Area Region; and

B. WHEREAS, on behalf of numerous water entities in the San Francisco Bay Area (the “Participating Water Entities”), BACWA agreed to apply for a Proposition 50 Chapter 8 Grant from the Department of Water Resources, State of California (“DWR”), that would be used to help fund the implementation and operation of various regional water conservation, water recycling, desalination and groundwater projects to be carried out by the Participating Water Entities; each of the Participating Water Entities is a public entity with state grant experience; Project Sponsor is one of the Participating Water Entities; and

C. WHEREAS, in March 2007, pursuant to BACWA’s request made on behalf of the Participating Water Entities, DWR awarded BACWA a grant for \$12.5 million in State funding and over \$150 million in matching funds (the “State Grant”); each of the Participating Water Entities will be recipients of the State Grant funds and will be the entities responsible for cost-matching required under the State Grant; the grant period will extend from March 20, 2007, the date of the Letter of Conditional Award, until 2013 when the lengthiest projects will wind down and grant closeout activities can be completed; the period of greatest activity under the State Grant is expected to be 2008, when all projects are expected to be active; and

D. WHEREAS, the process by which the State Grant funds will be disbursed by DWR to BACWA is governed by way of that certain Grant Agreement entered into by and between DWR and BACWA titled **Agreement No. 4600007654** (the “State Agreement”), a true and correct copy of which is attached hereto and incorporated herein as Exhibit “A”<sup>1</sup>; the funds of the State Grant are reimbursable, in that each discrete

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<sup>1</sup> A true and correct copy of an unexecuted version of the State Agreement is attached hereto and incorporated herein as Exhibit “A”, and for sake of simplicity, the exhibits that will be attached to the final, executed version of the State Agreement are not attached to Exhibit “A” herein. Each of the Participating Water Entities, including Project Sponsor, hereby agrees to abide by the final, executed version of the State

project and all eligible administration costs will be reimbursed by DWR after the cost has been incurred and a request for reimbursement has been produced and submitted to DWR by BACWA, the grantee under the State Agreement; BACWA and each of the Participating Water Entities will cooperate in fulfilling the obligations under the State Agreement for disbursement of the State Grant funds to BACWA, who will in turn disburse the State Grant funds to each of the Participating Water Entities for their specified projects; and

E. WHEREAS, the process by which each of the Participating Water Entities will submit their reimbursement requests to BACWA, and how BACWA will in turn disburse the State Grant funds to each of the Participating Water Entities, will be governed by individualized versions of this Implementation Agreement entered into between BACWA and each individual Water Entity (collectively, the “Implementation Agreements”); each of the Implementation Agreements will contain similar terms and provisions, but will be tailored to the specific funding and grant requirements particular to each of the Participating Water Entities; each of the Implementation Agreements that will be entered into by and between BACWA and each of the Participating Water Entities, including Project Sponsor, will ensure that matching funds are committed by the Participating Water Entities and all pertinent conditions under the State Agreement are satisfied, which is intended to reduce the risk of exposure to BACWA in executing the State Agreement on behalf of the Participating Water Entities; thus, the process by which Project Sponsor will submit its reimbursement requests to BACWA, and how BACWA will in turn disburse the applicable portion of the State Grant funds to Project Sponsor, is governed by this Implementation Agreement; this Implementation Agreement shall be fully executed prior to when Project Sponsor will be entitled to submit its first reimbursement request to BACWA and before BACWA will in turn be required to disburse the applicable portion of the State Grant funds to Project Sponsor; and

F. WHEREAS, BACWA, as a Joint Powers Authority, relies on the paid services of the East Bay Municipal Utility District (“EBMUD”) Accounting Department to provide all its financial accounting services; it is anticipated that, in carrying out each of the Implementation Agreements and the State Agreement, BACWA will rely on EBMUD Accounting to provide all the necessary financial services, including but not limited to the final development of State Grant reimbursement requests, the tracking of State Grant reimbursements from DWR and the distribution of the State Grant funds to the Participating Water Entities; and

G. WHEREAS, one of the stipulations BACWA entered into with the Participating Water Entities was that the cost of applying for and implementing the State Grant and the State Agreement will be fully paid for by the Participating Water Entities, not BACWA; additionally, BACWA and the Participating Water Entities stipulated that all liability under the State Grant and the State Agreement will be the responsibility of the Participating Water Entities, not BACWA; thus, each of the obligations set forth in the Implementation Agreements, including this Implementation Agreement, are to be

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Agreement, even if that final version is different from the unexecuted version that is attached hereto as Exhibit “A”.

fulfilled in the manner that most furthers these stipulations; where BACWA will serve as a project sponsor for a particular project that it will carry out, it will maintain liability for that particular project only.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, and in furtherance of the recitals set forth hereinabove, it is understood and agreed by and between BACWA and Project Sponsor as follows:

### **EXHIBITS**

The following exhibits, attached hereto, are incorporated herein and made a part hereof for all purposes, to-wit:

- Exhibit "A": The State Agreement (unexecuted version)
- Exhibit "B": Work Plan
- Exhibit "C": Schedule
- Exhibit "D": Budget
- Exhibit "E": Report Format
- Exhibit "F": BACWA Board Resolution authorizing execution of this Implementation Agreement
- Exhibit "G": Project Sponsor Board Resolution authorizing execution of this Implementation Agreement
- Exhibit "H": Statewide Monitoring

### **PURPOSE; SHARE OF COSTS**

1. **PURPOSE:** This Implementation Agreement is made by and between BACWA and Project Sponsor to assist in financing that particular project described in Exhibit "B", Work Plan (hereinafter "Project"). Project Sponsor's share of the State Grant funds may be used only as provided in this Implementation Agreement for Eligible Costs as included in Exhibit "B", Work Plan.
2. **TERM:** The term of this Implementation Agreement begins on \_\_\_\_\_, and terminates when Project Sponsor's obligations under this Implementation Agreement have been fully satisfied.
3. **STATE GRANT AMOUNT:** Project Sponsor's share of the \$12,500,000.00 in State Grant funds is \$\_\_\_\_\_, which such share shall hereinafter be referred to as the "State Grant Amount" and which is summarized in Exhibit "D", Budget.

4. **PROJECT SPONSOR'S COSTS:** The total reasonable costs of Project are estimated to be \$\_\_\_\_\_, which are summarized in Exhibit "D", Budget. Project Sponsor agrees to fund the difference, if any, between the total estimate of Project work costs and the State Grant Amount specified in Paragraph 3, above. Project Sponsor's Costs are therefore estimated to be \$\_\_\_\_\_, which is summarized in Exhibit "D", Budget. Project Sponsor agrees to dedicate revenues in the amount of the estimate of Project Sponsor's Costs as described in Exhibit "D", Budget, as such estimate may be revised from time to time, which such dedicated revenues may be utilized only for the payment of Project Sponsor's Costs.
  
5. **ELIGIBLE COSTS:** Project Sponsor shall apply its share of State Grant funds received only to Eligible Costs. "Eligible Costs" are the reasonable and necessary costs of engineering, design, legal fees, land and easement, preparation of environmental documentation, environmental mitigation and project implementation. Only work performed after the effective date of the State Agreement between BACWA and DWR shall be eligible for reimbursement. Costs incurred after November 5, 2002, and prior to the effective date of the State Agreement, are not eligible for reimbursement. However, such costs may be considered, at DWR's discretion, as part of Project Sponsor's funding match, if such costs were otherwise reimbursable. Costs that are not reimbursable with State Grant funds include, but may not be limited to, the following:
  - a. Costs incurred prior to November 5, 2002.
  - b. Project operation and maintenance costs, including post-construction performance and monitoring costs.
  - c. Purchase of equipment not an integral part of Project.
  - d. Establishing a reserve fund.
  - e. Purchase of a water supply.
  - f. Replacement of existing funding sources for ongoing programs.
  - g. Support of existing agency requirements and mandates.
  - h. Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of Project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to the effective date of the State Agreement.
  - i. Payment of principal or interest of existing indebtedness or any interest payments, unless the debt is incurred after execution of the State Agreement, DWR agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise Eligible Costs.

- j. Overhead not directly related to Project costs.
6. UPFRONT CONTRIBUTION OF ADMINISTRATION COSTS: BACWA, as administrator of the State Grant funds, will not provide upfront funds for the administration of the State Grant. On (DATE), BACWA invoiced each of the Participating Water Entities a proportional share of upfront costs in order to establish a fund to pay for administration costs incurred in the development of the State Agreement between BACWA and DWR, the development of the Implementation Agreements by and among BACWA and each of the Participating Water Entities, and the establishment of an accounting system. Each of the Participating Water Entities will be obligated to provide BACWA their proportionate share (which shall be calculated as the ratio of the State Grant Amount to the total of the State Grant funds, i.e., Project Sponsor's share of the State Grant funds divided by the total of the State Grant funds) of \$80,000.00 in estimated administration costs to begin implementation of the State Agreement. Project Sponsor has already provided BACWA an upfront payment of \$\_\_\_\_\_, which represents Project Sponsor's share of the \$80,000.00 upfront administration costs. The proportion of Project Sponsor's share of the upfront administration costs to all upfront administration costs shall be Project Sponsor's "Proportionate Share", which such Proportionate Share shall be used to determine Project Sponsor's share of future administration costs billed by BACWA, as described in Paragraph 7, below.
7. ADMINISTRATION COSTS IN GENERAL: The upfront administration costs already invoiced and discussed in Paragraph 6, above, are estimated to be sufficient to establish a fund from which BACWA can draw to pay for administration costs until such time as it can be replenished through reimbursements provided by DWR through the State Agreement. On a quarterly basis, BACWA will request a reimbursement under the State Agreement for administration and legal costs incurred by BACWA. ("Legal costs" are defined to include the cost of legal representation incurred by BACWA when entering into the State Agreement with DWR, the costs of BACWA's legal representation in developing the Implementation Agreements between BACWA and the Participating Water Entities, and the cost of BACWA's legal representation in answering questions that may arise during course of performance of the State Agreement and/or the Implementation Agreements.) If at any time it appears that there may be insufficient funds to carry out the administration of the State Grant, BACWA will send out additional invoices to each of the Participating Water Entities. Project Sponsor agrees to pay BACWA its Proportionate Share of such costs when they are billed. BACWA agrees that under no circumstances will the costs of administration services provided by BACWA be greater than the cost BACWA itself pays for such administration services. Project Sponsor may request reimbursement for the administration costs it pays to BACWA by way of the invoices that it submits to BACWA, as provided in Paragraph 36, below.

The total amount of the State Grant funds that is anticipated to be used to reimburse the Participating Water Entities for administration and legal costs

incurred by BACWA and billed to the Participating Water Entities is \$250,000.00. Project Sponsor agrees that if the cost of administration appears that it will exceed \$250,000.00, then Project Sponsor will cooperate with BACWA and each of the remainder Participating Water Entities (by and through the Oversight and Coordination Committee, as discussed in Paragraph 23, below) to determine what additional portion of the State Grant funds will be used to reimburse for administration costs and how such reimbursement will occur.

Project Sponsor acknowledges that the State Agreement encompasses numerous projects to be carried out by each of the Participating Water Entities, including Project Sponsor, and thus different schedules are applicable to each such project and there is the possibility of unforeseen delays in certain projects. Due to such circumstances, some projects encompassed by the State Agreement may be completed before others and other projects may take longer to complete than originally contemplated, and as a result, the cost of administration under the State Agreement may increase. Therefore, Project Sponsor agrees that it will cooperate with BACWA and each of the remainder Participating Water Entities (by and through the Oversight and Coordination Committee, as discussed in Paragraph 23, below) to determine how such costs for prolonged administration, if any, will be billed and reimbursed.

8. **REDIRECTION OF UNUSED ADMINISTRATION COSTS:** Project Sponsor agrees that, if any of the State Grant funds that were originally allocated under the State Agreement to cover administration costs are not needed for that purpose, Project Sponsor will cooperate with BACWA and the remainder of the Participating Water Entities (by and through the Oversight and Coordination Committee, as discussed in Paragraph 23, below) to request approval from DWR to redirect such funding.

### **PROJECT-SPECIFIC REQUIREMENTS**

9. **PROJECT MANAGERS:** Either BACWA or Project Sponsor may change its Project Manager upon written notice to the other party.
  - a. **BACWA's Project Manager:** BACWA's Project Manager shall be Michele M. Pla, its Executive Director. BACWA's Project Manager shall be BACWA's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance or payment for work performed under this Implementation Agreement.
  - b. **Project Sponsor's Project Manager:** Project Sponsor's Project Manager shall be           (Name)          , its           (Title)          . Project Sponsor's Project Manager shall be Project Sponsor's representative for the administration of this Implementation Agreement and shall have full authority to act on behalf of Project Sponsor, including authority to execute all payment requests.

10. **PROJECT SPONSOR RESPONSIBILITY:** Project Sponsor shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers and providers of services. Project Sponsor or its representatives shall provide regular inspections of any construction work in progress regarding Project. Project Sponsor shall give attention to fulfillment of this Implementation Agreement and completion of Project work, and shall keep all work under control.
11. **PROJECT SCHEDULE:** Project Sponsor shall diligently perform all Project work as described in Exhibit “B”, Work Plan, and in accordance with Exhibit “C”, Schedule.
12. **PROJECT RELATED DISPUTES:** Project Sponsor shall be responsible for any and all disputes arising out of its contracts for Project work, including but not limited to bid disputes and payment disputes with Project Sponsor’s contractors, subcontractors and suppliers. BACWA will not mediate disputes between Project Sponsor and any other party concerning responsibility for performance of Project work.
13. **RELATIONSHIP OF BACWA AND PROJECT SPONSOR:** Project Sponsor is solely responsible for design, construction, operation and maintenance of Project. Review or approval of plans, specifications, bid documents or other construction documents by BACWA is solely for the purpose of proper administration of State Grant funds by BACWA and shall not be deemed to relieve or restrict Project Sponsor’s responsibility or to constitute design approval.
14. **PROJECT SPONSOR REPRESENTATIONS:** Project Sponsor accepts and agrees to comply with all the applicable terms, provisions, conditions and commitments of the State Agreement, including all documents incorporated therein; all the terms, provisions, conditions and commitments of this Implementation Agreement, including all incorporated documents; and to fulfill all assurances, declarations, representations and statements relevant to Project made by Project Sponsor to BACWA and with respect to BACWA’s application, documents, amendments and communications filed in support of its request to DWR for the State Grant.

Project Sponsor also acknowledges and accepts that, pursuant to Paragraph 10 of the State Agreement, in the event that BACWA fails to secure an individualized Implementation Agreement with any of the Participating Water Entities by August 1, 2008, BACWA will not be held responsible for the associated Water Entity’s activities under Section 7 of the State Agreement, and DWR may reduce the State Grant funds according to the portion of the State Grant funds intended for the nonparticipating Water Entity(ies). In addition, in the event BACWA fails to secure an individualized Implementation Agreement with any of the Participating Water Entities, BACWA shall submit to DWR a revised State Agreement “Scope of Work” within four months of the failure to secure such an individualized Implementation Agreement. Moreover, Project Sponsor

acknowledges and accepts that, pursuant to Paragraph 10 of the State Agreement, BACWA is required to submit to DWR copies of all individualized Implementation Agreements with the Participating Water Entities within two months of the execution of such agreements. Project Sponsor agrees to cooperate with BACWA in any way necessary in order for BACWA to comply with Paragraph 10 of the State Agreement.

15. **PROJECT PERFORMANCE AND ASSURANCES:** Project Sponsor agrees to faithfully and expeditiously perform all Project work as described in the final plans and specifications under this Implementation Agreement and to implement, operate and maintain Project in accordance with applicable provisions of the law. In the event BACWA finds it necessary to enforce this provision of this Implementation Agreement, Project Sponsor agrees to pay all costs incurred by BACWA including, but not limited to, reasonable attorneys' fees, legal expenses and other associated costs.
16. **INSPECTION OF PROJECT BY BACWA AND DWR:** BACWA and DWR shall have the right to inspect the work being performed at any and all reasonable times, providing a minimum of a 24-hour notice, during the term of this Implementation Agreement. This right shall extend to work performed under any Project related contracts and subcontracts, and Project Sponsor shall include provisions ensuring such access in all its contracts or subcontracts entered into for Project.
17. **FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER:** Upon completion of Project and as may be determined by BACWA and/or DWR, Project Sponsor shall provide for a final inspection and certification by a California Registered Civil Engineer that Project has been completed in accordance with submitted final plans and specifications, and any modifications thereto, and in accordance with this Implementation Agreement.
18. **OPERATION AND MAINTENANCE OF PROJECT:** For the useful life of Project, and in consideration of Project Sponsor's share of the State Grant funds (i.e., the State Grant Amount), Project Sponsor agrees to expeditiously commence and to continue operation of Project and shall cause Project to be operated in an efficient and economical manner; shall provide for all repairs, renewals, and replacements necessary to the efficient operation of the same; and shall cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. Project Sponsor shall assume all operations and maintenance costs of Project facilities and structures; BACWA shall not be liable for any cost of such maintenance, management or operation. For purposes of this Implementation Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, entities, insurance and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.



Project Sponsor may be excused from operations and maintenance only upon the written approval of BACWA. If Project Sponsor wishes to be excused from operations and maintenance, Project Sponsor shall first request permission for such excusal from BACWA in writing. Upon receipt thereof, BACWA will forward the request to DWR for its determination as to whether the requested excusal will be authorized. BACWA will inform Project Sponsor, in writing, of DWR's approval or disapproval of the requested excusal. If DWR approves the requested excusal, then BACWA shall provide the necessary permission to Project Sponsor required by this Paragraph.

Refusal of Project Sponsor to ensure operation and maintenance of Project in accordance with this Paragraph may, at the option of BACWA, be considered a breach of this Implementation Agreement and may be treated as a default.

19. **MONITORING REQUIREMENTS:** Project Sponsor shall ensure that any component of Project that includes groundwater monitoring requirements is consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76, commencing with Section 10780, of Division 6 of the California Water Code), and that any portion of Project that affects water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including, but not limited to, the surface water ambient monitoring program carried out by the State Water Resources Control Board. Exhibit "H", Statewide Monitoring, provides guidance on such monitoring requirements.
20. **NOTIFICATION REQUIREMENTS:** Project Sponsor shall promptly notify BACWA, in writing, of the following items:
  - a. Events or proposed changes that could affect the scope, budget or work performed under this Implementation Agreement. Project Sponsor agrees that no substantial change in the scope of Project will be undertaken until written notice of the proposed change has been provided to BACWA and BACWA has obtained written approval from DWR for such change.
  - b. Any public or media event publicizing the accomplishments and/or results of this Implementation Agreement. Project Sponsor shall make such notification at least thirty (30) calendar days prior to the event and shall provide the opportunity for attendance and participation by BACWA's and DWR's representatives.
  - c. Completion of work on Project.
  - d. Final inspection of Project by a Registered Civil Engineer, in accordance with Paragraph 17. Project Sponsor shall make such notification at least thirty (30) calendar days prior to the final inspection and shall provide BACWA and DWR the opportunity to participate in the inspection.

21. **ACKNOWLEDGEMENT OF CREDIT:** Project Sponsor shall include appropriate acknowledgment of credit to DWR, BACWA and all other cost-sharing partners for their support when promoting Project, any associated State Grant-funded project or using any data and/or information developed under this Implementation Agreement. During construction and implementation of Project, Project Sponsor shall install a sign at a prominent location which shall include a statement that Project is financed under the California Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002, administered by State of California, Department of Water Resources. Project Sponsor shall notify BACWA as each sign has been erected by providing it with a site-map with the sign location noted and a photograph of each sign.
22. **PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT BACWA PERMISSION:** Project Sponsor shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with Project without prior written permission of BACWA. Project Sponsor shall not take any action, including but not limited to actions relating to user fees, charges and assessments that could adversely affect the ability of Project Sponsor to meet its obligations under this Implementation Agreement, without prior written permission of BACWA.

If Project Sponsor wishes to take any action contemplated by this Paragraph for which prior written permission is required of BACWA, Project Sponsor shall first request such permission from BACWA in writing. Upon receipt thereof, BACWA will forward the request to DWR for its determination as to whether the requested action will be authorized. BACWA will inform Project Sponsor, in writing, of DWR's approval or disapproval of the requested action. If DWR approves the requested action, then BACWA shall provide the necessary permission to Project Sponsor to carry out the requested action.

Project Sponsor acknowledges and accepts that, pursuant to the State Agreement, DWR may require that the proceeds from the disposition of any such real or personal property be remitted to DWR.

**OVERSIGHT AND COORDINATION COMMITTEE;**  
**SUBMISSION OF REPORTS**

23. **OVERSIGHT AND COORDINATION COMMITTEE:** BACWA and the Participating Water Entities, including Project Sponsor, will and—once each of the Participating Water Entities execute the individualized Implementation Agreements—hereby do form an Oversight and Coordination Committee (hereinafter the “OCC”). The purpose and function of the OCC will be to review draft forms of the Quarterly Reports (as described below), review pending Reimbursement Requests (as described below) and resolve any outstanding issues concerning the State Agreement and/or the State Grant funds. The OCC will also interact with DWR personnel as needed. The OCC must review and agree on any

proposal to change administration-cost funding allocations under the State Agreement before request for approval thereof is submitted by BACWA to DWR. The OCC will meet via teleconference on a quarterly basis, or more frequently as may be necessary. The OCC will be composed of BACWA's Project Manager and/or a BACWA Board Member, as well as the Project Manager for each of the Participating Water Entities, including Project Sponsor's Project Manager. Any review of reports or pending Reimbursement Requests by the OCC will be independent of any review or certification required by BACWA.

24. GENERAL REQUIREMENTS REGARDING REPORTS: The submittal and approval of all reports is a requirement for the successful completion of this Implementation Agreement and the State Agreement. All reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling and grammar prior to submittal to BACWA. All reports shall be submitted to BACWA's Project Manager, and shall be submitted in both electronic and hard-copy forms. If requested, Project Sponsor shall promptly provide any additional information deemed necessary by BACWA for approval of reports. Reports shall be presented in the formats described in Exhibit "E", Report Format. The submittal and approval of reports is a requirement for initial and continued disbursement of State Grant funds by BACWA to each of the Participating Water Entities, including Project Sponsor.
25. PROGRESS REPORTS: Beginning     (Month)     8, 200    , and for the duration of this Implementation Agreement, Project Sponsor shall submit to BACWA a Progress Report which explains the status of Project as described in Exhibit "B", Work Plan. Progress Reports shall be submitted not later than the 8th of January, April, July and October for the preceding quarter. Progress Reports shall summarize the work completed for Project during the reporting period. Progress Reports shall include a statement of progress compared to the schedule contained in Exhibit "C", Schedule, and a comparison of actual costs to date to the budget contained in Exhibit "D", Budget.
26. QUARTERLY REPORTS: Beginning     (DATE)    , and for the duration of the State Agreement, BACWA will submit to DWR a Quarterly Report that will explain the status of each project to be carried out by the Participating Water Entities, including Project Sponsor's Project. Quarterly Reports will be submitted by the last day of January, April, July and October for the preceding quarter. Quarterly Reports will summarize the work completed for each project to be carried out by the Participating Water Entities, including Project Sponsor's Project, during the reporting period. Quarterly Reports will include, for each project, a statement of progress compared to the schedules submitted by the Participating Water Entities, and a comparison of the actual costs to date to the budgets submitted by the Participating Water Entities.

BACWA will prepare each Quarterly Report based on the information provided by the Participating Water Entities, including Project Sponsor, by way of the

Progress Reports. Each Quarterly Report will be presented to the OCC in draft form prior to submittal to DWR. If requested, Project Sponsor shall promptly provide any additional information deemed necessary by BACWA for preparation and approval of the Quarterly Reports.

27. **PROJECT COMPLETION REPORTS:** Project Sponsor shall prepare and submit to BACWA a Project Completion Report for Project as described in Exhibit “B”, Work Plan. Project Sponsor shall submit a Project Completion Report within sixty (60) calendar days of completion of all tasks associated with Project. The Project Completion Report shall include a description of actual work done, a final schedule showing actual progress versus planned progress and copies of any final documents or reports generated or utilized during Project Sponsor’s implementation of Project. The Project Completion Report shall also include, if applicable, certification of completion of Project by a registered civil engineer, consistent with Paragraph 17 of this Implementation Agreement.

After receiving the Project Completion Report from Project Sponsor, BACWA will forward the Project Completion Report, after making any necessary changes, to DWR. This Project Completion Report will be submitted by BACWA to DWR within ninety (90) calendar days of completion of all tasks associated with Project.

28. **STATE GRANT COMPLETION REPORT:** Upon completion of all the projects to be carried out by the Participating Water Entities, including Project Sponsor’s Project, BACWA will submit to DWR a Grant Completion Report. The Grant Completion Report will be submitted within ninety (90) calendar days of BACWA’s submittal of the Project Completion Report for the final project to be completed under the State Agreement, whether that project is Project Sponsor’s Project or a project of one of the other Participating Water Entities. The Grant Completion Report will include a brief description of each project to be completed by the Participating Water Entities, including Project Sponsor’s Project, and how the projects will further the goals of the State Agreement. If requested, Project Sponsor shall promptly provide any additional information deemed necessary by BACWA for preparation and approval of the Grant Completion Report.

29. **POST COMPLETION PERFORMANCE REPORTS:** Project Sponsor shall submit a Post Completion Performance Report for Project. A Post Completion Performance Report shall be submitted to BACWA within sixty (60) calendar days after the first operational year of Project has elapsed. In subsequent operational years, all Post Completion Performance Reports for all projects shall be submitted concurrently, and no later than     (Date)     of each year. This record keeping and reporting process shall be repeated annually for a total of ten (10) years after Project, as completed, begins operation.

After receiving the Post Completion Performance Reports from Project Sponsor, BACWA will forward the Post Completion Performance Reports, after making any necessary changes, to DWR.

**METHOD OF DISBURSEMENT OF STATE GRANT FUNDS**

30. REQUIREMENTS FOR DISBURSEMENT: Project Sponsor acknowledges and accepts that, under the State Agreement, BACWA, by and through the Participating Water Entities, including Project Sponsor, will be required by the State Agreement to, by      (DATE)     , meet all conditions precedent to the disbursement of money under the State Agreement, including Basic Conditions, Paragraph 31. Project Sponsor acknowledges and accepts that failure by BACWA, by and through the Participating Water Entities, including Project Sponsor, to comply with this date may, at the option of DWR, result in termination of the State Agreement and, by implication, this Implementation Agreement. For disbursements of State Grant funds for Project, Project Sponsor shall continue to meet the Basic Conditions, Paragraph 31, as well as the Conditions for Disbursement, Paragraph 32.
  
31. BASIC CONDITIONS: Project Sponsor acknowledges and accepts that DWR and BACWA shall have no obligation to disburse money under the State Agreement and this Implementation Agreement, respectively, unless and until BACWA, by and through the Participating Water Entities, has satisfied DWR's requirements for disbursement in accordance with the California Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, which include:
  - a. Adoption of an Integrated Regional Water Management Plan.
  - b. BACWA demonstrates the Participating Water Entities are aware of and will comply with the provisions of the State Agreement between BACWA and DWR.
  - c. Project Sponsor demonstrates the availability of sufficient funds to complete Project, taking into account that portion of the State Grant Amount that has yet to be disbursed for Project, and BACWA demonstrates the availability of sufficient funds to complete the projects to be carried out by the other Participating Water Entities.
  - d. BACWA demonstrates that the Participating Water Entities, including Project Sponsor, have complied with all applicable requirements of the California Environmental Quality Act and the National Environmental Policy Act by submitting copies of any required environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements and environmental permits as may be required prior to beginning construction and/or implementation of the projects to be carried out by the Participating Water Entities, including Project Sponsor's Project.

- e. For the term of the State Agreement, BACWA submits timely periodic progress reports and Post Completion Performance Reports as referenced in Paragraphs 24-29.
32. **CONDITIONS FOR DISBURSEMENT:** Prior to disbursement of State Grant funds by BACWA to Project Sponsor, Project Sponsor shall submit to BACWA:
- a. Final plans and specifications certified by a California Registered Civil Engineer as to compliance with the approved Project as defined in Paragraph 17.
  - b. A written statement that all necessary permits, easements, rights-of-way and approvals as may be required by other State, federal and/or local agencies have been obtained.
33. **SUBMISSION OF INVOICES:** Prior to the submittal of any reimbursement requests by BACWA to DWR, Project Sponsor shall provide to BACWA an invoice for costs incurred with respect to Project. Invoices submitted by Project Sponsor shall include the following information:
- a. Costs incurred for work performed in implementing Project or Project contracts during the period identified in the particular invoice.
  - b. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for Project during the period identified in the particular invoice for the construction, operation or maintenance of Project.
  - c. All appropriate receipts and reports for costs incurred.
  - d. Invoices shall meet the following format requirements:
    - i. Invoices must contain the date of the invoice, the time period covered by the invoice and the total amount due.
    - ii. Invoices must be itemized based on the categories specified in Exhibit "D", Budget. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked multiplied by the hourly or daily rate = the total amount claimed).
    - iii. Each invoice shall clearly delineate those costs claimed for reimbursement from the State Grant Amount and those costs that represent Project Sponsor's Costs.
    - iv. Original signature and date (in ink) of Project Sponsor's Project Manager.

34. **REIMBURSEMENT REQUESTS:** Reimbursement Requests for costs incurred with respect to the projects to be carried out by the Participating Water Entities, including Project Sponsor's Project, are expected to be submitted on a quarterly basis by BACWA to DWR. BACWA will be responsible for preparing the Reimbursement Requests based on the invoices and other records provided by the Participating Water Entities, including Project Sponsor. Reimbursement Requests will be submitted for those invoices and records which have been provided to BACWA, even if one or more of the Participating Water Entities has not submitted an invoice for the reimbursement period in question. Each Reimbursement Request will be made available to the OCC for review and comment before BACWA submits it to DWR. If requested, Project Sponsor shall promptly provide any additional information deemed necessary by BACWA for preparation and approval of the Reimbursement Requests.
35. **METHOD OF REIMBURSEMENT:** Once a Reimbursement Request is finalized by BACWA, BACWA will submit it to DWR. Project Sponsor acknowledges and accepts that only after the disbursement requirements in Paragraphs 30-32, above, are met, in addition to the requirements for timely progress reports, will DWR be obligated to disburse any of the State Grant funds to BACWA. Project Sponsor additionally acknowledges and accepts that State Grant funds will be disbursed by DWR subject to the availability of funds through normal DWR processes. Project Sponsor also acknowledges and accepts that, per the State Agreement, DWR, and thus BACWA, is only obligated to disburse to Project Sponsor any of the State Grant Amount in Paragraph 3, above, once Project Sponsor has expended the amount specified in the column entitled "Required Local Cost Share" in Exhibit "D", Budget.

After BACWA receives a disbursement of State Grant funds in response to a Reimbursement Request, the funds will then be disbursed by BACWA to the Participating Water Entities, including Project Sponsor, as applicable. A transmittal letter will be sent to each of the Participating Water Entities entitled to a disbursement in order to document, at a minimum, the reimbursement amount, the cumulative amount of reimbursement distributed to date, the cumulative matching amount to date and any other outstanding issues.

With respect to any disbursement of State Grant funds to Project Sponsor, such funds will be disbursed in accordance with the relative payment obligations set forth in Paragraph 3, State Grant Amount, and Paragraph 4, Project Sponsor's Costs. Any and all State Grant funds that are disbursed to Project Sponsor under this Implementation Agreement, and any and all interest earned by Project Sponsor on such funds, shall be used solely to pay Eligible Costs.

36. **REIMBURSEMENT FOR ADMINISTRATION COSTS:** Project Sponsor agrees to pay BACWA its Proportionate Share of administration and legal costs when they are billed, pursuant to Paragraph 7, above. Project Sponsor may include a request for reimbursement of the administration costs that it paid to BACWA

when Project Sponsor submits its invoices to BACWA for reimbursement by DWR to Project Sponsor through BACWA.

37. **WITHHOLDING OF STATE GRANT DISBURSEMENT:** If BACWA determines that Project is not being constructed substantially in accordance with the provisions of this Implementation Agreement, or that Project Sponsor has failed in any other respect to comply substantially with the provisions of this Implementation Agreement, and if Project Sponsor does not promptly remedy any such failure to BACWA's satisfaction, BACWA may withhold from Project Sponsor all or any portion of the State Grant Amount and take any other action that it may deem necessary to protect its interests.

Project Sponsor acknowledges and accepts that if DWR determines that any of the projects to be carried out by the Participating Water Entities, including Project Sponsor's Project, are not being constructed substantially in accordance with the provisions of the State Agreement, or that any of the Participating Water Entities, including Project Sponsor, has failed in any other respect to comply substantially with the provisions of the State Agreement, and if the Water Entity in question does not remedy such failure to DWR's satisfaction, DWR may withhold from BACWA all or any portion of the State Grant funds and take any other action that it may deem necessary to protect its interests.

38. **WITHHOLDING A PORTION OF THE STATE GRANT FUNDS:** Where a portion of the State Grant Amount has been disbursed to Project Sponsor and BACWA notifies Project Sponsor of its or DWR's decision to withhold the balance of the State Grant Amount because of a failure of Project Sponsor to perform its obligations hereunder, the portion that has been disbursed shall thereafter be repaid immediately with interest, as directed by BACWA. Refusal of Project Sponsor to repay such amount may, at the option of BACWA, be considered a breach of this Implementation Agreement and may be treated as a default.

Project Sponsor acknowledges and accepts that, pursuant to Paragraph 18 of the State Agreement, if DWR makes a determination applicable only to a portion of the State Grant funds that BACWA, by and through a particular Participating Water Entity, has not substantially complied with the State Agreement's requirements, DWR will notify BACWA of its determination. DWR may thereafter withhold a portion of the State Grant funds applicable to the particular Participating Water Entity in question and require BACWA to immediately repay all or any portion of the State Grant funds that have already been disbursed to it with interest, consistent with DWR's determination. Thus, if Project Sponsor is responsible for DWR's determination to withhold a portion of the State Grant funds pursuant to Paragraph 18 of the State Agreement, then Project Sponsor shall comply with the above sub-paragraph and repay any portion of the State Grant Amount that has already been disbursed to it, with interest, to BACWA for reimbursement to DWR. If Project Sponsor is not responsible for DWR's determination to withhold a portion of the State Grant funds pursuant to



Paragraph 18 of the State Agreement, then Project Sponsor hereby agrees to comply with the requirements of Paragraph 58 of this Implementation Agreement, as applicable. Project Sponsor further acknowledges and accepts that the failure of BACWA, by and through the Participating Water Entities, to repay the requested disbursed State Grant funds to DWR after Paragraph 18 of the State Agreement is triggered, may be considered by DWR to be a breach of the State Agreement subject to the default provisions thereof. Furthermore, Project Sponsor acknowledges and accepts that if DWR acts under Paragraph 18 of the State Agreement to withhold a portion of the State Grant funds, DWR may require BACWA to submit a revised Work Plan, Schedule and Budget for DWR's approval before DWR disburses any additional State Grant funds. Project Sponsor therefore agrees to cooperate with BACWA in any way necessary to ensure that it is able to comply with the provisions of Paragraph 18 of the State Agreement.

39. **WITHHOLDING ENTIRE OR REMAINING PORTION OF STATE GRANT AMOUNT:** If BACWA notifies Project Sponsor of its or DWR's decision to withhold the entire State Grant Amount, or any remaining portion of the State Grant Amount after a portion has already been disbursed, this Implementation Agreement shall terminate upon receipt of such notice by Project Sponsor and shall no longer be binding on either BACWA or Project Sponsor, save and except Project Sponsor's obligations under Paragraph 38, above.
40. **RETENTION:** Project Sponsor acknowledges and accepts that DWR, hence BACWA, may withhold ten percent (10.0%) of the State Grant funds until the projects to be carried out by the Participating Water Entities are completed and the Participating Water Entities have met the applicable requirements of Paragraphs 24-29. Project Sponsor shall be entitled to its ten percent (10.0%) of the State Grant Amount withheld by DWR when it submits its Project Completion Report and it has been accepted by DWR, unless Project Sponsor is the last of the Participating Water Entities to complete its project, in which case Project Sponsor will have to wait until the State Grant Completion Report has been submitted to and accepted by DWR before it will be entitled to its ten percent (10.0%) of the State Grant Amount withheld by DWR.

### **ACCOUNTING REQUIREMENTS**

41. **BOOKKEEPING REGARDING STATE AGREEMENT:** All bookkeeping regarding the State Agreement, and any State Grant funds disbursed by DWR relating thereto, will be the responsibility of BACWA. At a minimum, records will be updated on a monthly basis to summarize BACWA administration costs to date, reimbursements requested from DWR, reimbursements received from DWR, matching costs submitted to DWR for approval, matching costs approved by DWR, reimbursements paid out by BACWA and any other outstanding financial issues. These monthly records will be made available in electronic format to each of the Participating Water Entities, and will be rolled up for Quarterly Reports or annual financial statements.

42. **SEPARATE ACCOUNTING OF GRANT DISBURSEMENT AND INTEREST RECORDS:** Project Sponsor shall account for the money disbursed pursuant to this Implementation Agreement separately from all other funds of Project Sponsor. Project Sponsor shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Project Sponsor shall keep complete and accurate records of all receipts, disbursements and any interest earned on such funds. Project Sponsor shall require its contractors and subcontractors to maintain books, records and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records of Project Sponsor shall be subject to inspection by BACWA or DWR at any and all reasonable times.
43. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** Project Sponsor agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of State law, the State Agreement or this Implementation Agreement.
44. **AUDITS:** BACWA reserves the right to conduct an audit at any time between the execution of this Implementation Agreement and the completion of Project, with the costs of such audit borne by BACWA. After completion of Project, BACWA may require Project Sponsor to conduct a final audit, at Project Sponsor's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Project Sponsor to comply with this provision shall be considered a breach of this Implementation Agreement, and BACWA may take any action it deems necessary to protect its interests. Project Sponsor also acknowledges and accepts that DWR may conduct an audit at any time between the execution of the State Agreement and the completion of Project, with the costs of such audit borne by DWR.

Project Sponsor agrees that BACWA, or its designated representative, and the Bureau of State Audit, or its representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Implementation Agreement. Project Sponsor agrees to maintain such records for a possible audit for a minimum of three (3) years after final payment of State Grant Amount, unless a longer period of record-retention is stipulated by and between BACWA and DWR prior to the end of the third (3<sup>rd</sup>) year and Project Sponsor is provided reasonable notice thereof. Project Sponsor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Project Sponsor agrees to include a similar right of BACWA and DWR, or their representatives, to audit records and interview staff in any contract related to performance of this Implementation Agreement.

45. **ANNUAL AND CLOSE-OUT AUDITS:** An annual audit as well as a close-out audit will be performed with respect to the State Grant funds that are disbursed pursuant to the State Agreement and this Implementation Agreement. Such audits

will be performed at the behest of BACWA and conducted by an independent Certified Public Accountant using Generally Accepted Accounting Principles. The costs of any such audit will constitute administrative costs for which BACWA will bill Project Sponsor and for which Project Sponsor can request reimbursement, consistent with Paragraph 7, above.

46. **INCOME RESTRICTIONS:** Project Sponsor agrees that any refunds, rebates, credits or other amounts (including any interest thereon) accruing to or received by Project Sponsor in relation to any work performed under this Implementation Agreement shall be paid by Project Sponsor to BACWA, for BACWA's payment to DWR, to the extent that they are properly allocable to costs for which Project Sponsor has been reimbursed by BACWA under this Implementation Agreement.
47. **REMITTANCE OF UNEXPENDED FUNDS:** Project Sponsor, within a period of thirty (30) calendar days from the final disbursement from BACWA to Project Sponsor of the State Grant Amount, shall remit to BACWA any unexpended funds that were disbursed to Project Sponsor under this Implementation Agreement and were not needed to pay Eligible Costs for Project.
48. **MAINTENANCE OF FILES:** BACWA will maintain a complete set of files related to the administration and management of State Grant funds during the period of time in which the State Grant funds are being distributed under the State Agreement. Such files will be maintained in a location that can be accessed by each of the Participating Water Entities, including Project Sponsor, as well as DWR personnel. At the end of the grant period, the files will be moved to a location where they can be expeditiously retrieved for a period of three (3) years after the grant period ends.

#### **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

49. **PERMITS, LICENSES, APPROVALS AND LEGAL OBLIGATIONS:** Project Sponsor shall be responsible for obtaining any and all permits, licenses and approvals required for performing its obligations under this Implementation Agreement. Project Sponsor shall comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) and other applicable federal, State and local laws, rules, regulations, guidelines and requirements prior to disbursement of State Grant funds under this Implementation Agreement. Without limiting the foregoing, Project Sponsor shall keep informed of and take all measures necessary to ensure compliance with California Labor Code requirements, including but not limited to Section 1730 *et seq.* of the California Labor Code regarding public works.
50. **COMPETITIVE BIDDING AND PROCUREMENTS:** Project Sponsor shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Project Sponsor's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by BACWA under this Implementation Agreement.

51. **AMERICANS WITH DISABILITIES ACT:** By signing this Implementation Agreement, Project Sponsor assures BACWA that it complies with the Americans With Disabilities Act (the “ADA”) of 1990, (42 U.S.C. § 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
52. **NONDISCRIMINATION:** During the performance of this Implementation Agreement, Project Sponsor 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, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Project Sponsor and 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. Project Sponsor and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code § 12990(a)-(f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990(a)-(f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Implementation Agreement by reference and made a part hereof as if set forth in full. Project Sponsor and 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. Project Sponsor shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this Implementation Agreement.
53. **DRUG-FREE WORKPLACE REQUIREMENTS:** Project Sponsor and its contractors and subcontractors will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code § 8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees, contractors and subcontractors that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors or subcontractors for violations, as required by Government Code Section 8355(a).
  - b. Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(b), to inform employees, contractors and subcontractors about the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. Project Sponsor’s policy of maintaining a drug-free workplace;

- iii. Any available counseling, rehabilitation and employee assistance programs; and
    - iv. Penalties that may be imposed upon employees, contractors and subcontractors for drug abuse violations.
  - c. As required by Government Code Section 8355(c), provide that every employee, contractor and/or subcontractor who works under this Implementation Agreement:
    - i. Will receive a copy of Project Sponsor's drug-free policy statement; and
    - ii. Will agree to abide by the terms of Project Sponsor's condition of employment, contract or subcontract.
- 54. **CURRENT STATE EMPLOYEES:** Project Sponsor acknowledges and accepts that no State officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment. Project Sponsor also acknowledges and accepts that no State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- 55. **FORMER STATE EMPLOYEES:** Project Sponsor acknowledges and accepts that, for the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. Project Sponsor also acknowledges and accepts that, for the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- 56. **GOVERNING LAW:** This Implementation Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

#### **DEFAULT AND INDEMNIFICATION**

- 57. **DEFAULT PROVISIONS:** Project Sponsor will be in default under this Implementation Agreement if any of the following occur:
  - a. Breach of this Implementation Agreement, or any supplement or amendment to it, or any other agreement between Project Sponsor and BACWA evidencing or securing Project Sponsor's obligations;

- b. Making any false warranty, representation or statement with respect to this Implementation Agreement;
- c. Failure to operate or maintain Project in accordance with this Implementation Agreement; or
- d. Failure to make any remittance required by this Implementation Agreement.

*Should an event of default occur, BACWA may do any or all of the following:*

- e. Declare Project Sponsor's share of the State Grant funds be immediately repaid to BACWA, with interest, which interest shall be equal to State of California general obligation bond interest rate in effect at the time of the default;
- f. Terminate any obligation to make future payments to Project Sponsor;
- g. Terminate this Implementation Agreement; or
- h. Take any other action that it deems necessary to protect its interests.

58. **INDEMNIFICATION; PROPORTIONAL RESPONSIBILITY FOR FINANCIAL SHORTFALL:** Project Sponsor agrees to indemnify BACWA and its officers, agents and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of Project Sponsor's implementation, operation and maintenance of Project. This indemnification provision shall also serve to hold BACWA free from any liability whatsoever that may result from the action or inaction, whatever the case may be, of any of the Participating Water Entities that results in a disruption or discontinuance of the disbursement of the State Grant funds under the State Agreement by DWR, regardless of whether that action or inaction is caused by Project Sponsor.

Further, Project Sponsor agrees to contribute to the full financial indemnification of BACWA in the event that DWR requires BACWA to return any portion of the State Grant funds that have been disbursed by BACWA to another Participating Water Entity and which that particular Entity fails to return to BACWA after diligent effort has been made by BACWA to recover such funds. This requirement shall be triggered upon BACWA's giving notice of the same to Project Sponsor. The particular amount that Project Sponsor will be required to so contribute will either be (1) a proportionate share of the amount that is owed to DWR (which such proportionate share shall be based on the ratio of the State Grant Amount to the total of the Stage Grant funds, i.e., Project Sponsor's share of the State Grant funds divided by the total of the State Grant funds), or (2) some other amount that is determined by another equitable basis agreed to by Project Sponsor and the remaining Participating Water Entities. Whichever option is utilized, Project Sponsor agrees to fully confer and cooperate with the other

Participating Water Entities to ensure that BACWA will not have to pay any of its own funds to DWR. In no event, however, shall Project Sponsor be required to contribute any amount that is over and above the State Grant Amount reflected in Paragraph 3 and summarized in Exhibit “D”, Budget.

59. **REMEDIES, COSTS AND ATTORNEY FEES:** Project Sponsor agrees that any remedy provided in this Implementation Agreement is in addition to and not in derogation of any other legal or equitable remedy available to BACWA as a result of breach of this Implementation Agreement by Project Sponsor, whether such breach occurs before or after completion of Project, and exercise of any remedy provided by this Implementation Agreement by BACWA shall not preclude BACWA from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between BACWA and Project Sponsor arising from this Implementation Agreement, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorneys’ fees as may be ordered by the court.
60. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Implementation Agreement may be terminated by written notice at any time prior to completion of Project, at the option of BACWA, upon violation by Project Sponsor of any material provision of this Implementation Agreement after such violation has been called to the attention of Project Sponsor and after failure of Project Sponsor to bring itself into compliance with the provisions of this Implementation Agreement within a reasonable time as established by BACWA. In the event of such termination, Project Sponsor agrees, upon demand, to immediately repay to BACWA an amount equal to the amount of State Grant funds disbursed to Project Sponsor prior to such termination. In the event of such 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 Project Sponsor to the date of full repayment by Project Sponsor.

Project Sponsor also acknowledges and accepts that the State Agreement may be terminated by written notice at any time prior to completion of the various projects to be carried out by the Participating Water Entities, at the option of DWR, upon violation by any of the Participating Water Entities of any material provision of the State Agreement after such violation has been called to the attention of the Water Entity in question and after failure of the Water Entity in question to bring itself into compliance with the provisions of the State Agreement within a reasonable time as established by DWR. Therefore, in the event of such termination, regardless of whether it is the fault of Project Sponsor or one of the other Participating Water Entities, Project Sponsor agrees, upon demand, to immediately repay to BACWA an amount equal to the State Grant Amount disbursed to Project Sponsor prior to such termination of the State Agreement. Project Sponsor further agrees that in the event of such 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 Project Sponsor to the date of full repayment by Project Sponsor.

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

### **REMAINING GENERAL TERMS AND CONDITIONS**

62. **STATE BUDGET CONTINGENCY:** Project Sponsor acknowledges and accepts that if the State Budget Act of the current year and/or any subsequent years covered by this Implementation Agreement does not appropriate sufficient funds for the projects to be carried out by each of the Participating Water Entities, including Project Sponsor's Project, this Implementation Agreement shall be of no force and effect. State appropriation of funds shall be construed as a condition precedent to the obligation of BACWA to make any payments under this Implementation Agreement. In this event, BACWA shall have no liability to pay any funds whatsoever to Project Sponsor or to furnish any other consideration under this Implementation Agreement and Project Sponsor shall not be obligated to perform any provisions of this Implementation Agreement. Nothing in this Implementation Agreement shall be construed to provide Project Sponsor with a right of priority for payment over any of the other Participating Water Entities. If funding for any fiscal year is reduced or deleted by the State Budget Act for purposes of the program contemplated by the State Agreement, BACWA shall have the option to either cancel this Implementation Agreement with no liability occurring to BACWA, or offer an Implementation Agreement amendment to Project Sponsor to reflect the reduced amount.
63. **INDEPENDENT CAPACITY:** Project Sponsor, and the agents and employees of Project Sponsor, if any, in the performance of this Implementation Agreement, shall act in an independent capacity and not as officers, employees or agents of BACWA.
64. **OPINIONS AND DETERMINATIONS:** BACWA and Project Sponsor agree that review or approval of any Project-related applications, documents, permits, plans and specifications or other Project-related information by BACWA is for administrative purposes only and does not relieve Project Sponsor of its responsibility to properly plan, design, construct, operate, maintain, implement or otherwise carry-out Project.
65. **CLAIMS BY PROJECT SPONSOR:** Any claim that Project Sponsor may have regarding the performance of this Implementation Agreement, including but not limited to claims for additional compensation or extension of time, shall be submitted to BACWA's Project Manager within thirty (30) days of Project Sponsor's knowledge of the claim. BACWA and Project Sponsor shall then



attempt to negotiate a resolution of such claim and process an amendment to this Implementation Agreement to carry-out the terms of any such resolution.

66. NOTICES: Any notice, demand, request, consent or approval that either BACWA or Project Sponsor desires or is required to give to the other party under this Implementation Agreement shall be in writing. Notices may be sent by any of the following means: (a) by delivery in person; (b) by certified U.S. mail, return receipt requested, postage prepaid; (c) by “overnight” delivery service by a recognized courier service, provided that next-business-day delivery is requested by the sender; or (d) by facsimile transmission, followed by submittal of a hard copy. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effectively given five (5) calendar days after the date deposited with the U.S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent by facsimile will be effective on the date of successful transmission, which is documented in writing. Notices shall be sent to the following addresses. Either BACWA or Project Sponsor may, by written notice to the other, designate a different address that shall be substituted for the one below:

Bay Area Clean Water Agencies  
Attention: Michele M. Pla  
6114 LaSalle Avenue, #456  
Oakland, CA 94611-2802  
Telephone: (510) 547-1174  
Facsimile: (510) 658-5146

                  (Project Sponsor)  
Attention:                   (Project Sponsor’s Project Manager)  
                  (Street Address)  
                  (City, Zip Code)  
Telephone:                   (Number)  
Facsimile No.:                   (Number)

67. TRAVEL: Project Sponsor agrees that travel and per diem costs shall NOT be eligible for reimbursement with State Grant funds, and shall NOT be eligible for computing Project Sponsor cost match. Travel includes the costs of transportation, subsistence and other associated costs incurred by personnel during the term of this Implementation Agreement.
68. INSPECTION OF BOOKS, RECORDS AND REPORTS: During regular office hours, BACWA and Project Sponsor, and their duly authorized representatives, shall have the right to inspect and to make copies of any books, records or reports of either party pertaining to this Implementation Agreement or matters related thereto. BACWA and Project Sponsor shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Implementation Agreement.

Project Sponsor acknowledges and accepts that DWR shall also have the right to inspect and to make copies of any books, records or reports of Project Sponsor pertaining to this Implementation Agreement or matters related thereto, and Project Sponsor shall make available at all times for such inspection by DWR accurate records of all its costs, disbursements and receipts with respect to Project Sponsor's activities under this Implementation Agreement.

Failure or refusal by Project Sponsor to comply with this provision shall be considered a breach of this Implementation Agreement, and BACWA may withhold disbursements to Project Sponsor or take any other action it deems necessary to protect its interests.

69. **DELIVERY OF INFORMATION, REPORTS AND DATA:** Project Sponsor agrees to expeditiously provide, during work on Project and throughout the term of this Implementation Agreement, such reports, data, information and certifications as may be reasonably required by BACWA.
70. **RIGHTS IN DATA:** Project Sponsor 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 Implementation Agreement shall be in the public domain. Project Sponsor may disclose, disseminate and use in whole or in part any final form data and information received, collected and developed under this Implementation Agreement, subject to appropriate acknowledgment of credit to DWR and BACWA for financial support. Project Sponsor shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
71. **DISPOSITION OF EQUIPMENT:** Project Sponsor shall provide to BACWA, not less than thirty (30) days prior to submission of Project Sponsor's final invoice to BACWA, a final inventory list of equipment purchased with State Grant funds provided by BACWA. Project Sponsor shall consult with BACWA on the scope of the inventory not less than sixty (60) days prior to the submission of the final invoice. The inventory shall include all items with a current estimated fair market value of more than \$500 per item and which are not an integral part of Project, to be permanently installed and dedicated solely to Project. Within one-hundred (100) days of receipt of such inventory, BACWA shall provide Project Sponsor with a list of the items on the inventory that DWR will take title to. All other items shall become the property of Project Sponsor. DWR shall arrange for delivery from Project Sponsor of items that it takes title to. Cost of transportation, if any, shall be borne by DWR.
72. **COMPUTER SOFTWARE:** Project Sponsor certifies that it has appropriate systems and controls in place to ensure that State Grant funds will not be used in the performance of this Implementation Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
73. **TIMELINESS:** Time is of the essence in this Implementation Agreement.

- 74. AMENDMENT: No amendment or variation of the terms of this Implementation Agreement shall be valid unless made in writing, signed by BACWA and Project Sponsor and approved as required. No oral understanding or agreement not incorporated in this Implementation Agreement is binding on BACWA or Project Sponsor.
- 75. SEVERABILITY OF UNENFORCEABLE PROVISION: If any provision of this Implementation Agreement is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Implementation Agreement shall be construed to remain fully valid, enforceable and binding on BACWA and Project Sponsor.
- 76. SUCCESSORS AND ASSIGNS: This Implementation Agreement and all of its provisions shall apply to and bind the successors and assigns of BACWA and Project Sponsor. No assignment or transfer of this Implementation Agreement or any part thereof, rights hereunder, or interest herein by Project Sponsor shall be valid unless and until it is approved by BACWA and made subject to such reasonable terms and conditions as BACWA may impose.

IN WITNESS WHEREOF, BACWA and Project Sponsor have executed this Implementation Agreement as of \_\_\_\_\_ (Date).

BAY AREA CLEAN WATER AGENCIES

\_\_\_\_\_(PROJECT SPONSOR)

By:\_\_\_\_\_

By:\_\_\_\_\_

Its:\_\_\_\_\_

Its:\_\_\_\_\_

**EXHIBIT "A"**

(Attach copy of unexecuted State Agreement, without attachments)

**EXHIBIT “B”**

(Attach copy of Project Sponsor’s Work Plan)

**EXHIBIT “C”**

(Attach copy of Project Sponsor’s Schedule)

**EXHIBIT “D”**

(Attach copy of Project Sponsor’s Budget)

**EXHIBIT “E”**  
**REPORT FORMAT**

**PROGRESS REPORTS**

Progress Reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on Project.

The Progress Reports should reflect the status of Project.

**Project Status**

For Project, describe the work performed during the reporting period, including:

*Project Information*

- Legal matters;
- Engineering matters;
- Environmental matters;
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal and/or local agencies;
- Major accomplishments during the reporting period (i.e., tasks completed, milestones met, meetings held or attended, press releases, etc.);
- Discussion of the ambient surface water and groundwater data submittal effort for the previous month, including a description of the data submitted and date(s) of submittal;
- Issues/concerns that have, will or could affect the schedule or budget, with a recommendation on how to correct the matter;
- Describe the differences between the work performed and the work outlined in Project work plans;
- Discussion of project performance achieved over the previous quarter relative to the criteria established in the Project Assessment and Evaluation Plan (“PAEP”).



### *Cost Information*

- Listing showing costs incurred during the reporting period by Project Sponsor and each contractor and subcontractor working on Project. Listing should include hours per task worked on during the reporting period for personnel.
- A discussion on how the actual budget is progressing in comparison to the project budget included in the Work Plan; and
- A revised budget, by task, if changed from the latest budget in Work Plan.

### *Schedule Information*

- A schedule showing actual progress versus planned progress as shown on Exhibit “C”, Schedule;
- A discussion on how the actual schedule is progressing in comparison to the schedule in Exhibit “C”;
- A revised schedule, by task, if changed from latest schedule in Exhibit “C”.

### *Anticipated Activities During Next Reporting Period*

- Provide a description of anticipated activities for the next reporting period.

## **PROJECT COMPLETION REPORT**

Project Completion Reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on Project.

### *Executive Summary*

The Executive Summary consists of a maximum of ten (10) pages summarizing Project information. The Executive Summary should include the following:

- Brief description of work proposed to be done in the original work plan;
- Description of actual work completed and any deviations from the original work plan;
- Describe the mechanism or process that allows for continued performance monitoring of Project in meeting the objectives of the Implementation Agreement;
- Identify if as a result of Project implementation, updates or changes to the Implementation Agreement are necessary. If updates or changes are anticipated,

summarize the necessary updates or changes and anticipated time frame when it will be accomplished; and

- Describe how the implemented Project will meet the regional priority identified in the State Agreement and how Project contributes to regional integration.

#### *Reports and/or Products*

- Provide a copy of the final technical report or study;
- Provide a map and shapefile(s) showing the location of the completed Project. A description of the geographic projection and datum used for the shapefile must be submitted with the shapefile (a NAD '27 datum and either a UTM 10 or UTM 11 projection, dependent on the project's location in the State, should be utilized);
- If any wells were constructed as part of Project, provide the following information: well logs; borehole geophysical logs; state well number; site information to include horizontal (NAD '27) and vertical (NAVD '88) datum to be determined within 0.5 feet;
- Provide an electronic copy of any as-built plans (media: CD-ROM; PDF format);
- Provide copies of any data collected along with location maps;
- If applicable, describe the findings of any study and whether the study determined the engineering, hydrologic, hydrogeologic, environmental, economic and financial feasibility of Project.

#### *Cost and Disposition of Funds Information*

- A list of invoices showing:
  - The date each invoice was submitted to BACWA;
  - The amount of the invoice;
  - The date the check was received by Project Sponsor for the invoice; and
  - The amount of the check. (If a check has not been received for the final invoice, then state this in this section.)
- A summary of final funds disbursement, including:
  - Labor cost of personnel of Project Sponsor/major consultant/sub-consultant. (Indicate personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc.);

- Construction cost information, shown by material, equipment, labor costs, and change orders;
- Any other incurred cost detail; and
- A statement verifying separate accounting of State Grant Amount disbursements.
- A summary of Project cost, including:
  - Accounting of the cost of Project expenditure;
  - Include all internal and external costs not previously disclosed;
  - A discussion of factors that positively or negatively affected Project and any deviation from the original Project cost estimate.

*Additional Information*

- A final Project schedule showing actual progress versus planned progress;
- Certification that Project was conducted in accordance with the approved work plan and any approved modifications thereto; and
- Submittal schedule for Post Completion Performance Report and outline of the reporting format.

**POST COMPLETION PERFORMANCE REPORT**

The Post Completion Performance Reports shall generally use the following format. This format may be modified as necessary to effectively communicate information on the operation of Project.

*Reports and/or Products*

- Summary of the operations of Project;
- Brief discussion of Project benefits to water quality, water supply and the environment;
- Brief comparison and any explanations for any difference between the expected versus actual Project success in meeting priorities as stated in the State Agreement and Implementation Agreement;
- Summary of any additional costs and/or benefits deriving from Project; and

- Any additional information relevant to or generated by the continued operation of Project.

**EXHIBIT “F”**

(Attach copy of BACWA Board Resolution  
authorizing execution of this Implementation Agreement)

**EXHIBIT “G”**

(Attach copy of Project Sponsor Board Resolution  
authorizing execution of this Implementation Agreement)

## EXHIBIT “H”

### **REQUIREMENTS FOR STATEWIDE MONITORING AND DATA SUBMITAL**

Ambient surface water and groundwater quality monitoring data (may include chemical, physical, or biological data) shall be submitted to the State as described below, with a narrative description of data submittal activities included in project reports, as described in Exhibit “E”.

Surface water quality monitoring data shall be submitted to the Surface Water Ambient Monitoring Program (SWAMP), which is administered by the State Water Resources Control Board (SWRCB). If a project work plan contains a surface water monitoring element, the Grantee shall also prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) in accordance with:

- The SWQAMP QAPP and data reporting requirements.
- The USEPA’s *EPA Requirements for Quality Assurance Project Plans* (Publication EPA AQ/R-5, 2001).

The QAPP shall be submitted to the State for review and a decision regarding approval. Any costs related to monitoring data collected prior to and not supported by the approved AQPP may not be reimbursed. Guidance for preparing the QAPP is available at:

<http://www.waterboards.ca.gov/swamp/qapp.html>

SWAMP comparable electronic format shall be followed. SWAMP data formats and templates can be accessed at:

<https://mpsl.mlml.calstate.edu/swdbcompare.html>

After the Grantee has followed the proper quality assurance and quality control (AQ/AC) procedures and prepared the data for submittal to SWAMP, the data shall be uploaded, using the methodology established by SWAMP, to the California Environmental Data Exchange Network (CEDEN) database at the following link:

<http://bdat.ca.gov>

Groundwater quality monitoring data shall be submitted to the State through the SWRCB Groundwater Ambient Monitoring and Assessment (GAMA) Program. If a project work plan contains a groundwater ambient monitoring element, the Grantee shall contact the SWRCB GAMA Program for guidance on the submittal of ambient groundwater data. Information on the SWRCB GAMA Program can be obtained at:

<http://www.waterboards.ca.gov/gama/index.html>

Prior to the Grantee implementing any sampling or monitoring activities, State must be notified in writing as the planned procedure for submittal of groundwater data to GAMA. Any costs related to monitoring data collected prior to submittal of planned procedures may not be reimbursed.

**REQUIREMENTS FOR PROJECT ASSESSMENT AND EVALUATION PLAN (PAEP) SUBMITTAL:**

Project Assessment and Evaluation Plans (PAEPs) shall be prepared for each project receiving grant funding. For each project, a PAEP shall be submitted to State prior to project construction or monitoring, and as deemed appropriate by State. For information about preparing PAEPs and the recommended content, relevant documentation may be found at the following web site:

<http://www.waterboards.ca.gov/funding/paep.html>