

**PROPOSITION 13 – WATER RECYCLING GRANT PROGRAM
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND**

Town of Windsor, hereinafter called "Grantee"

Recycled Water Facilities Planning Study, hereinafter called "Project"

AGREEMENT NO. 11-187-550

State and Grantee hereby agree as follows:

PROVISION(S). The following provision(s) authorize the State Water Board to enter into this type of Grant Agreement:

Water Code § 79140 (Proposition 13 Water Recycling)

The State Water Board, pursuant to the Preliminary Funding Commitment, Division of Financial Assistance (Division) Determination No. 2012-09, approved on April 5, 2012 and State Water Board Delegation Resolution No. 2007-0066 has authorized Water Recycling Grant Program funds for the Project.

PURPOSE. State shall provide a grant to and for the benefit of Grantee for the purpose of conducting a facilities planning study that will determine the feasibility of expanding the recycled water distribution system to include all new or planned developments and other uses located within the Town of Windsor that would like to begin using recycled water to offset their potable water demands.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$75,000.00. Global Positioning System (GPS) locations for any monitoring must be identified for this Project prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on April 5, 2012 and continue through final payment, plus thirty-five (35) years unless otherwise terminated or amended as provided in the Agreement. **HOWEVER, ALL WORK SHALL BE COMPLETED BY OCTOBER 5, 2015. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER NOVEMBER 30, 2015.**

Project Representatives. The Project Representatives during the term of this Agreement will be:

State Water Resources Control Board	Grantee: Town of Windsor
Name: Mr. Daniel Newton, Grant Manager	Name: Mr. Matthew Mullan, Project Director
Address: 1001 I Street, 16th Floor Sacramento, CA 95814	Address: 9291 Old Redwood Highway Windsor, CA 95492
Phone: (916) 324-8404	Phone: (707) 838-1000
Fax: (916) 341-5707	Fax:
e-mail: dnewton@waterboards.ca.gov	e-mail: mmullan@townofwindsor.com

Direct all inquiries to:

State Water Resources Control Board	Grantee: Town of Windsor
Section/Unit: Division of Financial Assistance	Section/Unit:
Attention: Jody Hack, Project Manager	Attention: Mr. Craig Scott, Grant Contact
Address: 1001 I Street, 16th Floor Sacramento, CA 95814	Address: 9291 Old Redwood Highway Windsor, CA 95492
Phone: (916) 341-5811	Phone: (707) 838-5340
Fax: (916) 341-5707	Fax:
e-mail: jhack@waterboards.ca.gov	e-mail: cscott@townofwindsor.com

Either party may change its Project Representative upon written notice to the other party.

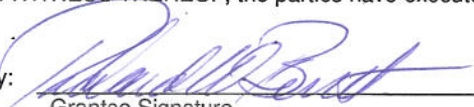
STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A SCOPE OF WORK
- Exhibit B INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS
- Exhibit C STATE WATER BOARD - GENERAL CONDITIONS
- Exhibit D WATER RECYCLING GRANT PROGRAM – SPECIAL CONDITIONS

GRANTEE REPRESENTATIONS. The Grantee 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 Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By:


Grantee Signature

Richard W. Burt


Grantee Typed/Printed Name

Public Works Director/Project Director

Title and Date

June 6, 2012

By:


Elizabeth L. Haven, Deputy Director
Division of Financial Assistance,
State Water Resources Control Board

Date

6/25/12

Reviewed by:
Office of Chief Counsel
Date:

EXHIBIT A – SCOPE OF WORK

1. Work To Be Performed by Grantee:

All work performed under this Grant Agreement shall be performed in accordance with the "Plan of Study Approval" letter dated March 15, 2012 and any amendments thereto, and the State Water Board "Preliminary Funding Commitment", Division Determination No. 2012-09 .

The Facilities Planning Report shall be received by the Grant Manager by April 5, 2014. If the Grantee is unable to meet this date, the Grantee may request a single time extension of up to twelve (12) months. A written request for a time extension must be received by the Grant Manager at least thirty (30) days in advance. The Grant Manager shall notify the Grantee, in writing, within thirty (30) days whether the request for a time extension has been approved. If the Final Facilities Planning Report has not been received by the Grant Manager by its final due date, it shall constitute a breach of a material provision of this Agreement and the State Water Board may require repayment of all grant funds disbursed pursuant to this Agreement plus interest.

Documents referenced above are hereby incorporated into this Grant Agreement in their entirety.

EXHIBIT B – DISBURSEMENT, BUDGET DETAIL AND REPORTING PROVISIONS

1. Request for Disbursement

- 1.1 An original Disbursement Request (Form 260) along with an original Grantee invoice shall be submitted to the State Water Board's Disbursement Coordinator. The Grantee may submit disbursement requests initially after this Agreement has been executed and subsequently not more frequently than every thirty (30) calendar days. Also required for disbursement of funds for Construction projects is a Construction Spreadsheet (Form 259). All disbursement forms and supporting documentation must be completed in accordance with the supplied instructions. All documents must have original signatures and dates (in ink) by Grantee's Authorized Representative, designee, or Project Director. Final disbursement requests shall be clearly marked 'FINAL' and submitted NO LATER THAN NOVEMBER 30, 2015.

The address for submittal is:

State Water Resources Control Board,
Division of Financial Assistance
Attention: Disbursement Coordinator
17th Floor, Administration Unit
P. O. Box 944212
Sacramento, CA 94244-2120

Street Address: 1001 I Street, 17th Floor
Sacramento, CA 95814

- 1.2 Payment will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed Form 260. Forms received by the State Water Board that are not consistent with the approved format will cause delay in disbursement. In the event of a delayed disbursement, the State Water Board's Disbursement Coordinator will notify the Grantee. Full payment will not be made until the issue(s) for the delay are resolved. Failure to use the address exactly as provided above may result in return of the invoice or payment request to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board's Grant Manager must approve all payments.
- 1.3 Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with Federal or State laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on State bonds, pursuant to any Federal statute or regulation.
- 1.4 Grantee shall use disbursement amounts to pay outstanding costs incurred immediately, if Grantee has not already paid such costs.

2. Budget Contingency Clause

The maximum amount to be encumbered under this Agreement for the 2011-12 fiscal year ending June 30, 2012 shall not exceed SEVENTY- FIVE THOUSAND DOLLARS (\$75,000.00).

The Grantee agrees to pay any and all costs associated with the completion of the Project, including without limitation, any and all Project costs exceeding the State Water Board approved grant amount.

If federal or other state funding assistance for Project costs is made available, the Grantee may retain all federal or other state funds received up to an amount that equals the Grantee's local share of Project costs. Any excess funds received, up to the total amount of the State Water Board grant funds received, shall be remitted to the State Water Board to the extent not prohibited by the requirements of the other funding sources. Any residue shall be the property of the Grantee.

Except as may be otherwise provided in this Agreement, disbursement of Grant Project Funds will be made as follows:

Only costs incurred after the date of approval of the Preliminary Funding Commitment are eligible for grant reimbursement. Disbursements may be requested in two (2) installments. The first disbursement may be requested upon submittal and approval of a draft facilities plan for an amount up to fifty percent (50%) of the total estimated grant amount. The second disbursement may be requested upon submittal and approval of the final facilities plan for an amount equal to fifty percent (50%) of total eligible costs incurred, not to exceed the maximum amount specified herein and less the amount of any previous disbursements. Disbursement requests must be approved by the State Water Board Grant Manager.

If during the course of the Study the Grantee determines that a water recycling project is not feasible for the study area, the Grantee, after consultation with and approval from the Grant Manager may terminate planning efforts prior to completion of all of the tasks specified in the plan of study. The results of the work completed and the basis for the conclusion shall be documented in a report. After submittal of the report, the Grantee may request a disbursement for an amount equal to fifty percent (50%) of the total eligible costs incurred, not to exceed seventy-five percent (75%) of the maximum amount specified herein and less the amount of any previous disbursement. The Grant Manager must approve the disbursement request.

If the State 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 Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

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 Grantee to reflect the reduced amount.

3. Line Item Budget

Description	Grant Amount
Planning	\$75,000.00
Total	\$75,000.00

4. Reports.

4.1 Completion of the Study, for purposes of the grant, consists of submittal of a final facilities planning report that fully documents all aspects of the study. The facilities planning report must include an analysis of all of the essential components of potential projects and must be in accordance with the Water Recycling Funding Guidelines.

4.2 The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications as may be reasonably required by the State Water Board.

5. Payment of Project Costs. The Grantee agrees that it will provide for payment of its full share of Project costs, and that all costs connected with the Project will be paid by the Grantee on a timely basis.

6. Final Disbursement. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
7. Audit Disallowances. The Grantee agrees it shall return any audit disallowances to the State Water Board.
8. Failure To Submit Report. Failure to submit any reports pursuant to this Exhibit required by the State Water Board shall constitute a breach of a material provision of this Agreement. The Grantee understands and acknowledges that upon failure to provide any such report pursuant to this Exhibit, the Division of Financial Assistance (Division) will stop processing any pending and future applications for new loans or grants and withhold payments on any existing loans and grants that the Grantee may have with the State Water Board until the report has been submitted to the Grant Manager's reasonable satisfaction. Further, upon failure to submit a report pursuant to this Exhibit, the Division shall issue a notification and request for the report and initiate administrative proceedings pursuant to Water Code sections 13267 and 13268 or use any other legal means to obtain the report. The Grantee further acknowledges that failure to submit required reports may result in termination of this Agreement and immediate repayment of all grant funds disbursed hereunder.
9. Fraud and Misuse of Public Funds. All invoices 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 or incorporated by reference. The Grantee 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 Grantee 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 grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to Exhibit C, paragraph 4 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 — STATE WATER BOARD GENERAL CONDITIONS

1. **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 understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
2. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.
3. **ASSIGNMENT:** This Grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State Water Board.
4. **AUDIT:** The Grantee agrees that the State Water Board, the Bureau of State Audits, the Governor of the State, of the Internal Revenue Service, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Division of Financial Assistance (Division), at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Grantee and at the cost of the Grantee. The audit shall be in the form required by the Division. The Grantee agrees to maintain such records for a possible audit for a minimum of thirty-five (35) years after final payment, unless a longer period of records retention is stipulated. The Grantee 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, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement. The Grantee agrees it shall return any audit disallowances to the State Water Board.
(Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.)
5. **BONDING:** Where contractors are used, the Grantee shall not authorize construction to begin until each such contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00. Copies of performance bonds must be submitted to the Grant Manager prior to the authorization of construction activities.
6. **CEQA/NEPA:** No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the Division. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. 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.
7. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.
8. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
9. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

10. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT:** The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the State Water Board. Such approval may be conditioned as determined to be appropriate by the State Water Board, including conditions requiring repayment of all grant funds or any portion of disbursed grant funds covered by this Agreement together with accrued interest and any penalty assessments that may be due. The Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Grantee to meet its obligations under this Agreement, without prior written permission of the State Water Board.
11. **DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS:** In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.
12. **DATA MANAGEMENT:** This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
13. **DISPUTES:** The Grantee shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. 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.
14. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
15. **GOVERNING LAW:** This Grant is governed by and shall be interpreted in accordance with the laws of the State of California.
16. **GRANTEE'S RESPONSIBILITY FOR WORK:** The Grantee shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors, subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
17. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.

18. **INDEPENDENT ACTOR:** The Grantee, 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.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
20. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee 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 larger system shall be free of all claims and liens.
21. **NONDISCRIMINATION:**
- a. During the performance of this Agreement, the Grantee and its consultants and contractors 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, and denial of family care leave.
 - b. The Grantee, its consultants, and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
 - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 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 Agreement by reference and made a part hereof as if set forth in full.
 - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
 - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination
22. **NO THIRD PARTY RIGHTS:** The parties to this Grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
23. **NOTICE:**
- a. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities.

- b. The Grantee shall promptly notify the State Water Board of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board, and the State Water Board has given written approval for such change.
 - c. The Grantee shall promptly notify the State Water Board of the discovery of any potential archeological or historical resources. Should a potential archeological or historical resource be discovered during construction of the Project, the Grantee agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resources, and the Division has determined what actions should be taken to protect and reserve the resources. The Grantee agrees to implement appropriate actions as directed by the Division.
 - d. The Grantee shall promptly notify the State Water Board of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Grantee agrees to cease all work in the area until a qualified biologist has evaluated the situation and made recommendations regarding the avoidance or minimization of impact on the species and/or habitat. The Grantee agrees to implement appropriate actions as directed by the Division.
 - e. The Grantee shall notify the State Water Board at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by State Water Board representatives.
 - f. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
 - g. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.
24. OPERATIONS & MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.
25. PERMITS, CONTRACTING, AND DEBARMENT: The Grantee shall procure all permits and licenses 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. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, if any, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. The Grantee shall not contract 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 Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 C.F.R. Part 31.35; Gov. Code, § 4477) www.epls.gov. The Grantee certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;
 - b. Have not within a three-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;
 - c. 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 paragraph (b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
26. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code, § 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
27. **PROFESSIONALS:** The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.
28. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:
- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;
 - c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
 - d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
 - 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 a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
29. **RELATED LITIGATION:** Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.
30. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support.

The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

31. **STATE REVIEWS AND INDEMNIFICATION:** The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State Water Board is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State Water Board and the State against any loss or liability arising out of any claim or action brought against the State Water Board and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code § 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 Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State 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.
32. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS:** Grant Funds shall not be used for supplemental environmental projects required by Regional Water Boards.
33. **STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES:** The Grantee 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 Grantee, whether such breach occurs before or after completion of the Project, 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 filing costs and attorney fees.
34. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.
35. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
36. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel shall be at rates not to exceed those set by the Department of Personnel Administration. These rates may be found at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.

37. **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 shall continue to have full force and effect and shall not be affected thereby.
38. **USEFUL LIFE OF PROJECT:** For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.
39. **VENUE:** The State Water Board and the Grantee 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, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
40. **WAIVER AND RIGHTS OF THE STATE WATER BOARD:** Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.
41. **WATERSHED MANAGEMENT PLAN CONSISTENCY:** Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist.
42. **WITHHOLDING OF GRANT DISBURSEMENTS:** The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT D – WATER RECYCLING GRANT PROGRAM TERMS AND CONDITIONS

1. The Grantee certifies that it is an Urban Water Supplier and the Department of Water Resources has determined that the Grantee is eligible to receive this grant.