

ITEM	DESCRIPTION OF WORK OR SUBMITTAL	ESTIMATED DUE DATE FOR SUBMITTAL ¹	CRITICAL DUE DATE
A-	Final Report		Month/Day/Year
A-	Final Summary		Before Final Invoice
	Natural Resource Projects Inventory (NRPI) Survey Form (If applicable)		Before Final Invoice
EXHIBIT B – FUNDING PROVISIONS			
	Disbursement requests and Progress Reports		Quarterly
	Final Disbursement Request		

EXHIBIT B – FUNDING PROVISIONS

B-1. Estimated Reasonable Cost.

The cost of the total Planning is Written Dollar Amount dollars and no cents (\$Dollar Amount).

B-2. Match Funds.

- (a) The Recipient agrees to provide Match Funds in the amount of _____.
- (b) This Match Funds amount is based on the budget, funding sources, and amounts submitted by the Recipient in its application and during the negotiation of this Agreement. Any Match Funds changes or adjustments requested by the Recipient must be approved, in advance and in writing, by the Grant Manager.
- (c) Only expenses that would be considered eligible project costs under Proposition 1 and the Policy will be counted towards the Recipient's Match Funds.
- (d) Any costs incurred prior to the adoption of Proposition 1 on November 4, 2014, will not count towards the Recipient's Match Funds.
- (e) If, at Planning Completion, the Recipient has provided Match Funds in an amount that is less than the Match Funds amount set forth above, the State Water Board may proportionately reduce the Planning Funding amount and/or Recipient's Match Funds amount, upon approval of the Deputy Director of the Division.

B-3. Planning Funding.

- (a) The maximum amount to be encumbered under this Agreement for the 201X-XX fiscal year ending June 30, 201X shall not exceed TYPE OUT DOLLAR AMOUNT (ALPHA) DOLLARS (\$NUMERIC).
- (b) The State Water Board makes a grant of Planning Funds to the Recipient for the purposes of this Agreement of up to Written Dollar Amount dollars and no cents (\$Dollar Amount).

B-4. Funding Dates.

- (a) The term of this agreement is from the Start Date on the cover page of this Agreement to the End Date of _____.
- (b) The Eligible Start Date is [Date]. Otherwise eligible costs incurred prior to this date will not be reimbursed.
- (c) The Final Disbursement Request Date is [Date]. The Deputy Director of the Division may extend this date for good cause. All disbursement requests must be submitted to the Division such that they are received prior to this date. Late disbursement requests will not be honored.

B-5. Funding Conditions and Exclusions.

- (a) This Agreement reflects Planning funding only. If the Recipient desires implementation/construction funding, apply for implementation/construction funding, and execute an implementation/construction funding agreement. Costs associated with the

implementation/construction phase of the possible eventual implementation/construction project are not eligible for reimbursement under this Agreement.

- (b) A final copy shall be submitted, acceptable to the Division, prior to disbursement beyond 90% of the Planning Funds.
- (c) Project Funds may not be used for any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Planning (i.e., costs that are not directly related to the Planning). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. Any invoice submitted including Indirect Costs will cause that invoice, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Recipient and any subcontract or sub-agreement for work on the Planning that will be reimbursed with grant funds pursuant to this Agreement. (Gov. Code, § 16727.)

B-6. Line Item Budget Summary

	PLANNING FUNDS	MATCH	TOTAL
Direct Project Administration Costs	\$	\$	\$
Planning/Design/Engineering/Environmental	\$	\$	\$
Equipment (\$5,000 or more per item) (Itemize each piece of equipment)	\$	\$	\$
Construction/Implementation	\$	\$	\$
Monitoring/Performance	\$	\$	\$
Education/Outreach	\$	\$	\$
TOTAL	\$	\$	\$

B-7. Budget Flexibility.

- (a) Subject to the prior review and approval of the Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to twenty percent (15%) of the total amount (excluding Match Funds), including any amendment(s) thereto. Line item adjustments in excess of twenty percent (15%) require an Agreement amendment. If the detailed budget includes an amount for Personnel Services, that amount is based on the hours, classifications, and rates submitted by the Recipient in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Grant Manager.
- (b) The Recipient may submit a request for an adjustment in writing to the Grant Manager. Such adjustment may not increase or decrease the total grant amount allocated per fiscal year. The Recipient shall submit a copy of the original Agreement Budget sheet reflecting the requested changes and shall note proposed changes by striking out the original amount(s) followed with proposed change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item shall require a formal amendment. The Division may also propose budget adjustments.

(c) The sum of adjusted line items shall not exceed the total budget amount.

B-8. Amounts Payable by the Recipient.

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

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

- (a) The State Water Board's obligation to disburse Planning Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the State government to appropriate funds necessary for disbursement of Planning Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other recipient. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to the Recipient to reflect the reduced amount.
- (b) Except as may be otherwise provided in this Agreement, disbursement of Planning Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request disbursement for eligible Planning Costs as specified in this Exhibit from the Planning Funds through submission to the State Water Board of disbursement requests using the disbursement request form provided by the Grant Manager
 - (2) Disbursement requests shall contain the following information:
 - a. The date of the request;
 - b. The time period covered by the request, i.e., the term "from" and "to";
 - c. The total amount requested;
 - d. Original signature and date (in ink) of Recipient's Authorized Representative; and,
 - e. The Final Disbursement Request shall be clearly marked "FINAL DISBURSEMENT REQUEST" and shall be submitted NO LATER THAN MONTH 30/31, 201X.
 - (3) Requests must be itemized based on the line items specified in the budget in this Exhibit. Requests must be signed by the Authorized Representative or designee and must be addressed to the Grant Manager as set forth in the Party Contacts section of this Agreement. Requests for disbursement submitted in any other format than the one provided by the State Water Board will cause a request for disbursement to be disputed. In the event of such a

- dispute, the Grant Manager will notify the Recipient. Payment will not be made until the dispute is resolved and a corrected request submitted. The Grant Manager has the responsibility for approving requests for disbursement. Requests must be complete and executed by the Recipient. Planning Costs incurred prior to the Eligible Start Date of this Agreement will not be funded
- (4) Planning Funds must be requested quarterly for eligible costs incurred during the reporting period of the corresponding Progress Report, describing the activities and expenditures for which the disbursement is being requested. Each disbursement request must be accompanied by a Progress Report. Failure to provide timely disbursement requests may result in such requests not being honored.
 - (5) The Recipient agrees that it will not request disbursement for any Planning Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request. Supporting documentation (e.g., receipts) must be submitted with each disbursement request as well as to support Match Funds claimed, if any. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Planning Funds will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed disbursement request.
 - (4) The Recipient will not seek reimbursement of any Planning Costs that have been reimbursed from other funding sources.
 - (5) Recipient shall spend Planning Funds within 30 days of receipt. Any interest earned on Planning Funds shall be reported to the State Water Board and will either be required to be returned to the State Water Board or deducted from future disbursements. In the event that the Recipient fails to disburse Planning Funds to contractors or vendors within thirty (30) days from receipt of the funds, the Recipient shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Recipient held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
 - (6) Recipient shall request its final disbursement no later than the Final Disbursement Request Date specified herein unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
 - (7) The Recipient agrees that it will not request a disbursement unless that cost is allowable, reasonable, and allocable.
 - (8) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner that is in violation of or in conflict with federal or state laws, policies, or regulations.
 - (9) The Recipient agrees that it shall not be entitled to interest earned on undisbursed planning funds.
 - (10) Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred

C-26. Public Funding.

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

C-27. Recipient's Responsibility for Work.

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

C-28. Records.

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

- (c) Establish an official file for the Planning which shall adequately document all significant actions relative to the Planning;
- (d) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Planning, including all assistance funds received under this Agreement;
- (e) Establish separate accounts which will adequately depict all income received which is attributable to the Planning, specifically including any income attributable to assistance funds disbursed under this Agreement;
- (f) Establish an accounting system which will accurately depict final total costs of the Planning, including both direct and indirect costs;
- (g) 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
- (h) If Force Account is used by the Recipient for the Planning, accounts will be established which reasonably document all employee hours charged to the Planning and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding. Planning Funds may not be used for any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Planning Project (i.e., costs that are not directly related to the Planning Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes. Any invoice submitted including Indirect Costs will cause that invoice, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed with Planning Funds pursuant to this Agreement. (Gov. Code, § 16727.)

- (i) Maintain separate books, records and other material relative to the Planning.
- (j) Retain such books, records, and other material for itself and for each contractor or subcontractor who performed work on this Planning for a minimum of thirty-six (36) years after Work Completion. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement. The provisions of this section shall survive the term of this Agreement.

C-29.Related Litigation.

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

C-30. Rights in Data.

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

C-31.State Cross-Cutter Compliance.

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

- (a) State Water Board's Drought Emergency Water Conservation regulations. Title 23, article 22.5 of the California Code of Regulations. The Recipient will include a discussion of its implementation in Progress Report submitted pursuant to this Agreement.
- (b) California Environmental Quality Act (CEQA). Implementation and construction activities must comply with CEQA and potentially other environmental review requirements, including the National Environmental Policy Act (NEPA). Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
- (c) Water Code section 5103, subdivision (e)(2)(A). If Recipient is a water diverter, Recipient must maintain compliance by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.
- (d) Labor Code sections 1725.5 and 1771.1. To bid for public works contracts, Recipient acknowledges that Recipient and Recipient's subcontractors must register with the Department of Industrial Relations.

- (e) Water Code sections 526 and 527, applicable to an “urban water supplier” as defined by Water Code section 10617.
- (f) Urban Water Management Planning Act (Water Code, § 10610 et seq.). If Recipient is an “urban water supplier” as defined by Water Code section 10617, the Recipient certifies that it has submitted an Urban Water Management Plan that has been deemed complete by the Department of Water Resources and is in compliance with that plan. This shall constitute a condition precedent to this Agreement.
- (g) Urban Water Demand Management Water Code section 10631.5, subdivision (a)(1). If Recipient is an “urban water supplier” as defined by Water Code section 10617, Recipient certifies that it is implementing water demand management measures approved by the Department of Water Resources.
- (h) Delta Plan Consistency Findings. Water Code section 85225 and California Code of Regulations, title 23, section 5002. If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient will submit a certification of project consistency with the Delta Plan to the Delta Stewardship Council prior to undertaking the implementation/construction project associated with this Planning.
- (i) Agricultural Water Management Plan Consistency. Water Code section 10852.
- (j) Charter City Project Labor Requirements. Labor Code section 1782 and Public Contract Code section 2503:

(1) Prevailing Wage

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

(2) Labor Agreements

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

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

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

C-33. Termination; Immediate Acceleration; Interest.

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

C-34. Timeliness.

Time is of the essence in this Agreement.

C-35. Unenforceable Provision.

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

C-36. Venue.

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

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

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

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

EXHIBIT D — SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

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