

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

GRANT FUNDING AGREEMENT
BETWEEN
THE STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND
THE COUNTY OF MONTEREY

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2. Claim Form (Article A-6(a))
3. Fiscal Agent Agreement (Article A-8)

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

GRANT FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND
THE COUNTY OF MONTEREY

THIS AGREEMENT, is entered into between the State of California Department of Public Health, herein referred to as “State,” and **The County of Monterey**, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as “County,” which parties do hereby agree as follows (the “Agreement”):

SECTION 1. PURPOSE OF FUNDING

This Agreement provides funding in the form of a grant made by State to the County under the provisions of the Federal Safe Drinking Water Act, 42 U.S.C. 300 j-12 et seq., (the “Act”), and the Safe Drinking Water State Revolving Fund Law of 1997, Health and Safety Code, section 116760.10 et seq., (the “State Act”), and in conformance with the Local Primacy Agency Program (the “LPA Program”), as detailed in the Local Primacy Delegation Agreement (the “LPDA”) entered into on _____. Grant funds may be used only for the operation of the LPA Program as required by this Agreement and the LPDA, which action is herein referred to as the “Project.”

County is solely responsible for the designated local primacy agency (the “LPA”) in the regulation, operation, monitoring, reporting, and maintenance of the Project; and for all persons or entities engaged in such work, including but not limited to contractors, subcontractors, suppliers, and providers of services.

SECTION 2. INCORPORATION OF OTHER DOCUMENTS

This Agreement incorporates by this reference the LPDA, the Fiscal Agent Agreement, Exhibit A: "Standard Conditions," and Exhibit B: "Special Terms and Conditions."

The County accepts and agrees to comply with all terms, provisions, and conditions of this Agreement, including all incorporated documents and exhibits thereto, and to fulfill all assurances, declarations, representations, and statements made by County in receiving its grant for funding.

SECTION 3. GRANT FUNDING

Subject to the availability of funds and in accordance with the terms of this Agreement, State will provide grant funding to County in accordance with County's water system inventory, submitted pursuant to Article A-3(b). State shall utilize the following guidelines in calculating the Grant Amount to be awarded to County:

- (a) \$4000 for each community water systems;
- (b) \$3000 for each non-transient non-community water systems;
- (c) \$1500 for each transient non-community water systems.

The different categories of water systems set forth above are as defined by Health and Safety Code, section 116275. The total Grant Amount is set forth in Exhibit B.

SECTION 4. SPECIAL TERMS AND CONDITIONS

County shall satisfy the special terms and conditions set forth in Exhibit B. Failure by County to satisfy the special terms and conditions may, at the option of State, result in cancellation of this Agreement under Article A-7 of the Standard Conditions, and/or declaration that County is in default pursuant to Article A-24 of the Standard Conditions.

SECTION 5. PROJECT OFFICIALS AND NOTICES

State's Grant Administrator shall be the Chief, Drinking Water Technical Programs Branch, Division of Drinking Water and Environmental Management, California Department of Public Health. All communications given to State's Grant Administrator shall be deemed given to State.

State's Grant Administrator shall be State's representative for administration of this Agreement, and shall have authority to make recommendations and findings with respect to each controversy arising under or in connection with this Agreement. All such recommendations and findings shall be communicated to the Chief, Division of Drinking Water

and Environmental Management of the California Department of Public Health, and disputes shall be resolved in accordance with Article A-22 of the Standard Conditions.

County's Grant Administrator shall be its Director of Health or designee. County's Grant Administrator shall be County's representative for administration of this Agreement. All communications given to County's Grant Administrator shall be deemed given to County.

Either party may change its Grant Administrator upon written notice to the other party.

Notices required to be given in writing by County under this Agreement shall be sent to:

State of California
California Department of Public Health
Division of Drinking Water and
Environmental Management
Attention: Small Water Systems Unit
1616 Capitol Avenue, MS 7408
Post Office Box 997377
Sacramento, California 95899-7377

Notices required to be given in writing by State under this Agreement shall be sent to:

The County of Monterey
Attn: Ray Bullick, Director of Health
1270 Natividad Road
Salinas, CA 93906

A change of address for delivery of notice may be given by written notice to the other party.

All written notices that are required either expressly or by implication to be given by one party to the other under this Agreement shall be signed for State by its Grant Administrator and for County by its Grant Administrator. Except as otherwise expressly required by this Agreement, all such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed postage-prepaid envelope and deposited in a United States Post Office for delivery by registered or certified mail.

SECTION 6. MISCELLANEOUS PROVISIONS

SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

GOVERNING LAW

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

LEGAL CAPACITY

County hereby warrants and represents that it has the authority to enter into this Agreement.

VENUE

The parties agree that venue of any action between the parties arising out of this Agreement, including disputes that may arise following termination of the Agreement, shall be County of Sacramento, State of California.

[Signature Page to Follow]

DATE OF EXECUTION

Date of Execution of this Agreement is the date of the latest in time execution by a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

Approved as to Legal Form
and Sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

By _____
Signature

By _____
Signature

Print Name

Print Name

Title

Title

Date

Date

Approved as to Legal Form
and Sufficiency:

THE COUNTY OF MONTEREY

By _____
Signature

By _____
Signature

Print Name

Print Name

Title

Title

Date

Date

EXHIBIT A

STANDARD CONDITIONS

ARTICLE A-1. DEFINITIONS

Whenever in this Agreement the following terms are used, their meaning shall be as follows unless the context clearly requires otherwise:

Eligible Project Costs -- Those Project costs which are eligible for funding under the Act and applicable State law and implementing guidelines, and this Agreement.

Grant Amount -- The total amount to be disbursed to County under this Agreement and the Fiscal Agent Agreement, as specified in Exhibit B.

Fiscal Agent -- A person identified by the Fiscal Agent Agreement who shall perform various obligations as set forth in such Fiscal Agent Agreement.

Public Water System or Public Water Supply System -- A system for the provision to the public of water for human consumption, as defined in Part 12, Chapter 4 (commencing with Section 116270), of Division 104 of the Health and Safety Code, as it may be amended.

ARTICLE A-2. TERM OF AGREEMENT

Subject to the provisions of Article A-7, this Agreement shall become effective on the Date of Execution and shall remain in effect for one year from the Date of Execution or until the Fiscal Agent has disbursed the entire Grant Amount, whichever occurs first.

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

Notwithstanding any other term of this Agreement, State shall have no obligation to cause funds to be disbursed under this Agreement unless and until:

(a) Minimum LPA Requirements. County shall meet the following minimum requirements:

1. LPA must ensure that all small public water systems within the LPA's jurisdiction (i) perform the required water quality monitoring, (ii) review the water quality monitoring results when they are submitted, and (iii) act in accordance with the requirements of the LPDA and applicable law.

2. LPA must ensure that all small public water systems are issued enforcement actions for any failure of a primary drinking water standard or any monitoring and reporting violation.
3. LPA must ensure that all current water supply permits are approved and on file, including those for new treatment processes or new sources.
4. LPA must ensure that all required data reporting elements are reported to CDPH-SWS Unit in a timely and accurate manner consistent with the requirements of 22 CCR §64257.

State has the sole discretion to determine that Minimum LPA Requirements are met by County .

- (b) Water System Inventory. County shall ensure that its water system inventory is fully updated and accurate. County shall submit its inventory to State, and this inventory will be used by State to determine the Grant Amount to be awarded to County. Small Water Systems (SWS) Unit staff will work with the LPA to verify that the submitted data is of acceptable quality and that the water systems are properly classified to meet SDWIS data migration rules.
- (c) Execution of the LPDA. County executes the LPDA and agrees to meet all applicable Project milestones as specified under Article A-5.
- (d) County Authorization. County has provided satisfactory documentation of the action taken by its governing body authorizing it to enter into this Agreement and the LPDA, and designating a representative to execute this Agreement and the LPDA and to sign claim(s) for disbursement of funds (**Attachment 1** of this Agreement).

ARTICLE A-4. COMPLIANCE WITH LAWS, REGULATIONS, AND PERMIT REQUIREMENTS

County shall at all times comply with, and require its employees, contractors and subcontractors, if any, to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations, permits, and ordinances.

ARTICLE A-5. PROJECT MILESTONES

County shall complete the following Project milestones:

- (a) Data Elements. Within 30 days after the Date of Execution, the County shall submit all required data elements through the electronic data transmission (EDT)

process in the then current format (.FTM files) for the SDWIS Unit to migrate data into SDWIS.

- (b) Full Database Submission. Within 30 days of the Date of Execution, the County shall submit all records residing in its database for all required elements as specified in 22 CCR §64257.
- (c) Correction of Data Errors. Within 30 days after the Date of Execution, the County shall begin work with the SWS Unit staff to correct any data errors generated and shall re-submit the corrected data when it becomes reasonably available via the EDT process to the State.
- (d) EAR Submission. Within 60 days after the Date of Execution, the County shall ensure that: (i) all community and non-transient non-community water systems under their jurisdiction have received written notice of the EAR reporting requirements; and (ii) all 2012 electronic annual reports (EARs) submitted by active community and non-transient, non-community water systems have been reviewed and accepted by the LPA. County shall use reasonable efforts to follow up with any delinquent water systems to secure the submission of the EAR.
- (e) LPA Work Plan. Within 60 days after the Date of Execution, the County shall submit the FY 2013-2014 LPA Annual Work Plan to its designated District Engineer.
- (f) Provision of Source Class Codes. By 120 days after the Date of Execution, the County shall begin to submit new or updated source class codes for all active ground water, surface water, GWUDI water sources, and treatment plants to SWS Unit staff who shall manually enter same into PICME/SDWIS.

ARTICLE A-6. DISBURSEMENTS BY STATE

Subject to the availability of funds and in accordance with the terms of this Agreement, Fiscal Agent will provide the Grant Amount to County pursuant Article A-8 in three separate disbursements as set forth below.

(a) Claims

Upon completion of the conditions precedent or relevant Project milestones County shall request a disbursement by submitting to State a claim documenting the completion of the applicable conditions precedent or Project milestones

necessary to initiate each disbursement. A claim for disbursement of funds shall be provided in the form of **Attachment 2** to this Agreement.

(b) Disbursements

Following the review and approval of a claim by State, State will provide instructions to and authorize the Fiscal Agent to disburse grant funds to County in an approved amount, subject to the availability of funds (each a "Disbursement"). Any and all funds disbursed to County under this Agreement shall be used solely to pay Eligible Project Costs.

State shall utilize the following Disbursement schedule to award the Grant Amount to County:

1. Disbursement 1: State shall award the first Disbursement, 34% of Grant Amount under this Agreement, upon the execution of this Agreement.
2. Disbursement 2: State shall award the second Disbursement, 33% of Grant Amount under this Agreement, upon satisfactory completion of Project milestones specified in Article A-5 (a), (b) and (c).
3. Disbursement 3: State shall award the third and final Disbursement, 33% of Grant Amount under this Agreement, upon satisfactory completion of Project milestones specified in Article A-5 (d) and (e).

(c) Rejection of Claims

A claim may be rejected by State if:

- (1) it is submitted without signature or it is submitted under signature of a person other than County's duly authorized representative.
- (2) State determines, in its sole discretion, that the claim is inaccurate or otherwise does not comply with the terms of this Agreement.

State will notify County of any claim so rejected, and the reasons therefore.

(d) Correction of Claims

A claim containing documentation error will be corrected by State, after telephone notification to County, and will thereafter be treated as if submitted in corrected form. State will confirm correction of the error, to County, in writing.

(e) Adjustments to Claims

If upon review of a claim, State determines that the claim is incorrect or incomplete under the Act, State law, implementing criteria, or the terms of this Agreement, State will notify County, by certified or registered mail, of its determination concerning County's failure to adequately provide documentation of milestone fulfillment or completion. County may, within thirty (30) days of the date of receipt of such notice, submit additional documentation or evidence to cure such deficiency(ies). If County does not submit additional information, or if State determines such additional information to be inadequate, State will act in accordance with Article A-7.

County may submit additional documentation or evidence, and resubmit any such rejected costs on a subsequent claim.

(f) Final Claim and Disbursement

With the submission of the final claim, County shall provide:

- (1) A certification by County's Grant Administrator that the data and information disclosed to State is true and correct.

Should County fail to make the full disclosure and certification required by part 1 of this paragraph (f), or should State become aware through any means that County did not use funds for the completion of Project milestones or improperly used grant money for purposes other than those designated in this Agreement or the LPDA; the Project may be referred to the California Department of Finance for a full Project audit.

ARTICLE A-7. WITHHOLDING OF GRANT DISBURSEMENTS BY STATE AND
CANCELLATION OF AGREEMENT

(a) Conditions for Withholding

If State determines that the Project is not being carried out substantially in accordance with the provisions of this Agreement and the LPDA, or that County has failed in any other respect to comply with the terms and conditions of this Agreement and the LPDA, State may give written notice of such failure to comply. If County does not cure any such failure to State's satisfaction within ten (10) calendar days of receipt of such notice, State may withhold from the County all or any portion of the Grant Amount and take any other action that it deems necessary to protect its interests, including but not limited to declaring County in default as set forth in Article A-24, or canceling this Agreement pursuant to Subpart (b) of this Article A-7.

(b) Withholding Entire Grant Amount

If State determines to withhold the entire Grant Amount from County pursuant to Subpart (a) of this Article A-7, notice of such a determination shall constitute a notice of cancellation of this Agreement and the LPDA, and this Agreement and the LPDA shall no longer be binding on any party hereto. Said Notice of Cancellation shall be sent to County by certified or registered mail, and shall be effective upon receipt.

(c) Withholding Balance of Grant Amount

When a portion of the Grant Amount has been disbursed to County and State determines to withhold funding, State will notify County in writing, via certified or registered mail, that State is withholding the balance of the funding from County, pursuant to Subpart (a) of this Article A-7. In such event, County will be deemed to be in default and subject to the provisions of Article A-24.

ARTICLE A-8 FISCAL AGENT AGREEMENT

County shall enter into a fiscal agent agreement for a Fiscal Agent substantially in the form of **Attachment 3** to this Agreement (the "Fiscal Agent Agreement"). A Fiscal Agent shall be retained until the Grant Amount has been disbursed in full to County.

County shall open a separate account (the "Account") with the Fiscal Agent, into which State shall disburse the Grant Amount in a single lump sum payment. The Account shall be used only for holding, disbursing and maintaining the grant funds. Funds in the Account shall not be invested in interest bearing obligations. Upon instruction from State, the Fiscal Agent shall release funds to County as specified by State.

Once State approves the Fiscal Agent Agreement, County shall not do any of the following without first obtaining written approval by State: amend the Fiscal Agent Agreement; close the Account; or retain a new Fiscal Agent.

State shall have no obligation to make Disbursements until the Fiscal Agent has been engaged and the Fiscal Agent Agreement Agent has been approved by State.

ARTICLE A-9. TIMING OF PROJECT

County shall execute this Agreement by November 30, 2013. County shall proceed expeditiously with the Project.

ARTICLE A-10. COUNTY'S CONTRACTS

County shall be solely responsible for resolution of any and all disputes arising out of or related to County's performance of the Project, including but not limited to employment and payment disputes with County's employees, contractors and subcontractors and shall provide appropriate releases (as set forth in California Civil Code Title 15) as may be requested by State.

ARTICLE A-11. AUDIT AND INSPECTION OF BOOKS AND RECORDS

- (a) Upon execution of this Agreement and until 3 years following final Disbursement under this Agreement, pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit by State or any agent thereof, and the State Auditor, with respect to all matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement. If any litigation, claim, negotiation, audit or other action is commenced before the expiration of said three (3) year period, all records must be retained until such action is resolved, or until the end of said three (3) year period whichever shall later occur. All records of County relating in any way to funding received pursuant to this Agreement shall be preserved for this purpose.
- (b) During regular office hours, each of the parties hereto 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 agreement or matters related hereto. Each of the parties hereto 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 Agreement. Failure or refusal by County to comply with this provision shall be considered a substantial failure to comply with this Agreement. State may declare County in default as set forth in Article A-24, withhold Disbursements to County, or take any other action it deems necessary to protect its interests. The provisions of this Subpart (b) shall be effective until expiration of the time period provided in Subpart (a) of this Article A-11.

ARTICLE A-12. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENTS

(a) Separate Accounting of Grant Disbursements

County shall account for the funds disbursed pursuant to this Agreement separately from all other County's funds. County shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles. County shall keep complete and accurate records of all receipts and Disbursements of such funds.

(b) Disposition of Funds Disbursed

In addition to specific requirements set forth in this Agreement, all funds disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to all provisions of law applicable to County.

(c) Interim and Final Audits

In addition to the provisions of Article A-11, at any time following execution of this Agreement and until completion of the Project, or final Disbursement whichever shall occur last, State reserves the right to conduct an audit of County's disposition of all funds disbursed under this Agreement.

Failure or refusal by County to comply with these provisions shall be considered a substantial breach of this Agreement.

ARTICLE A-13. SINGLE AUDIT ACT

If County receives \$500,000 or more in federal awards in a year from any source, including federal funds disbursed under this Agreement, County agrees to comply with all requirements of the Office of Management and Budget Circular A-133 issued pursuant to the Single Audit Act, as the same may be amended from time to time.

ARTICLE A-14. [INTENTIONALLY RESERVED]

ARTICLE A-15. NONDISCRIMINATION CLAUSE

During the performance of this Agreement, County, its contractors and subcontractors, shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. County, its contractors and subcontractors, shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

County, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the

Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State Agency to implement such article.

By signing this Agreement, County assures State that it shall comply with the requirements of the Americans with Disabilities Act (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; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989); Federal Water Pollution Control Act Amendments of 1972, Pub.L. No. 92-500, 86 Stat 816; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Agreement as the “anti-discrimination laws”.

County agrees to collect and maintain information to show compliance with the “anti-discrimination laws” including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

County, its contractors and subcontractors shall give written notice of their obligations under this Article to labor organizations with which they have a collective bargaining or other agreement.

County's signature on this Agreement shall constitute a certification under penalty of perjury under the laws of the State of California that County has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

County shall include the nondiscrimination and compliance provisions of this Article A-15 in all contracts and subcontracts to perform work on the Project.

ARTICLE A-16. WORKERS' COMPENSATION CLAUSE

County affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and County affirms that it will comply with such provisions before commencing performance of work under this Agreement and will make its contractors and subcontractors aware of this provision.

ARTICLE A-17. SUCCESSORS AND ASSIGNS

This Agreement and all of its provisions shall inure to the benefit of, apply to, and bind the heirs, successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part hereof by County shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

ARTICLE A-18. [INTENTIONALLY RESERVED]

ARTICLE A-19. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive, and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE A-20. AMENDMENTS

This Agreement may be amended only by mutual written agreement signed by the parties hereto. Requests by County for amendments must be in writing stating the amendment request and the reason for the request.

ARTICLE A-21. WAIVER OF RIGHTS

It is the intention of the parties hereto that from time to time either party may waive any of its rights under this Agreement unless contrary to law. Any waiver by either party hereto of rights arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other rights or matters.

ARTICLE A-22. DISPUTE CLAUSE

Any dispute that County may have regarding the performance of this Agreement including, but not limited to, claims for additional Disbursements of funds or extension of time, shall be submitted to State's Grant Administrator identified in Section 5 of this Agreement. State's Grant Administrator may make findings and recommendations and transmit a copy of the claim and any such findings and recommendations to the California Department of Public Health, Chief, Division of Drinking Water and Environmental Management, who shall make a decision on such dispute which decision shall be in writing and transmitted to County by certified or registered mail. Said decision shall be final and conclusive.

ARTICLE A-23. PERFORMANCE AND ASSURANCES

County agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in Article A-5, and to apply funds received only to Eligible Project Costs and to operate and maintain the Project in accordance with applicable provisions of the law.

ARTICLE A-24. DEFAULT PROVISIONS

- (a) County will be in default under this Agreement if any of the following occur:
 - (1) County's substantial breach of this Agreement, or any supplement or amendment to it;
 - (2) County's making of any false warranty, representation, or statement with respect to this Agreement or the Project; and/or
- (b) When an event of default occurs, State may give County notice of default. County shall have ten (10) calendar days from the date of such notice to cure the default. If County fails to timely cure the default to the satisfaction of State, then State may do any or all of the following:
 - (1) Declare that any and all amounts disbursed to County under the terms of this Agreement shall be deemed an obligation of County and due and payable to State;
 - (2) Declare County's obligations immediately due and payable, with or without demand or notice to County, which County expressly waives;
 - (3) Terminate any obligation of State to make further Disbursements to County under this Agreement; and/or
 - (4) Take any other action it deems necessary to protect its interests.
- (c) County 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 State as a result of a breach of agreement by County, whether such breach occurs before or after completion of the Project.
- (d) No waiver by State of any breach or default will be a waiver of any other breach or default.

ARTICLE A-25. DRUG-FREE WORKPLACE CERTIFICATION

By signing this Agreement, County hereby certifies under penalty of perjury under the laws of the State of California that County will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- (b) Establish a Drug-Free Awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation and employee assistance programs;
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
- (c) Every employee who works on the Project:
 - (1) Shall be issued a copy of County's drug-free policy statement;
 - (2) Shall agree to abide by terms of County's statement as a condition of employment on the Project.

This Agreement may be subject to suspension of payments or termination, or both, and County may be subject to debarment if State determines that: (1) County has made a false certification, or (2) County has violated the certification by failing to carry out the requirements of this Article A-25.

ARTICLE A-26. CONFLICT OF INTEREST--CURRENT AND FORMER STATE EMPLOYEES

- (a) Current State Officers and Employees:
 - (1) County shall not utilize in the performance of this Agreement any state officer or employee in the state civil service or other appointed state official unless the employment, activity, or enterprise is required as a

condition of the officer or employee's regular state employment.
Employee in the state civil service is defined to be any person legally holding a permanent or intermittent position in the state civil service.

- (2) If any state officer or employee is utilized or employed in the performance of this Agreement, County shall first obtain written verification from State that the employment, activity, or enterprise is required as a condition of the officer's, employee's, or official's regular state employment and shall keep said verification on file for three (3) years after the termination of this Agreement.
 - (3) County may not accept occasional work from any currently employed state officer, employee, or official.
 - (4) If County accepts volunteer work from any currently employed state officer, employee, or official, County may not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem, or the like, in connection with volunteer work on behalf of County.
 - (5) County shall not employ any state officers, employees, or officials who are on paid or unpaid leave of absence from their regular state employment.
 - (6) County or anyone having a financial interest in the Agreement may not become a state officer, employee, or official during the term of this Agreement. County shall notify each of its employees, and any other person having a financial interest in this Agreement that it is unlawful under the Public Contract Code for such person to become a state officer, employee, or official during the term of this Agreement unless any relationship with the County giving rise to a financial interest, as an employee or otherwise, is first terminated.
 - (7) Occasional or one-time reimbursement of a state employee's travel expenses is not acceptable.
- (b) Former State Officers and Employees:
- (1) County shall not utilize in the performance of this Agreement any formerly employed person of any state agency or department that was employed under the state civil service, or otherwise appointed to serve in the State Government, if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision making process relevant to the Agreement while employed in any capacity by any state agency or department. This prohibition shall apply for a two (2) year period beginning on the date the person left state employment.

- (2) County shall not utilize within twelve (12) months from the date of separation from services, a former employee of the contracting state agency or department if that former employee was employed in a policy making position in the same general subject area as the proposed Agreement within the twelve (12) month period prior to the employee leaving state service.

ARTICLE A-27. PROHIBITED USE OF STATE FUNDS

County 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 following:

- (a) Software. County shall not use grant funds pursuant to this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (b) Unrelated County Purposes. County shall not use grants funds pursuant to this Agreement for purposes not related to the Project and performance of the LPDA. Prohibited use of the funds include, but are not limited to, the implementation of county administrative purposes, operations, and programs not associated with the fulfillment of Project and the LPDA.

Any suspected occurrences of fraud, negligence, forgery, embezzlement, theft, or any other misuse of public funds shall be considered a substantial breach of this Agreement. State may immediately suspend Disbursements of grant funds and/or terminate the LPDA and this Agreement in whole or in part pursuant to Article A-7 or Article A-24.

EXHIBIT B

SPECIAL TERMS AND CONDITIONS

ARTICLE B-1. FINAL GRANT AMOUNT AWARDED

The Final Grant Amount shall be **\$879,000**.

ARTICLE B-2. OTHER TERMS AND CONDITIONS

Notwithstanding Article A-2 of Exhibit A, Term of Agreement, before any State Fund identified in this Agreement be disbursed to the County from the fiscal agent, the County must first identify a special non-interest bearing deferred revenue liability account known as LPA Trust Fund. The fiscal agent shall deposit funds received from this Agreement directly to the LPA Trust Fund and shall only make disbursements from such trust fund once eligible expenses have been identified. Such account shall be used exclusively to fund authorized program expenses in the current and future fiscal years in accordance with the county's standard annual budgeting practices. If the county spends the funds on non-eligible expenses, the monies are subject to recoupment by the State.

ATTACHMENT 1

COUNTY AUTHORIZATION

BOARD OF SUPERVISORS RESOLUTION FOR COUNTY AUTHORIZATION
TO BE INSERTED UPON APPROVAL

ATTACHMENT 2

DISBURSEMENT CLAIM FORM

CLAIM FORM

(Attachment #2 to Grant Funding Agreement)

Please submit the original and one copy of this Claim Form to:

**Department of Public Health, Safe Drinking Water Office
Attn: Wendy Killou
P.O. Box 997377, MS 7418
Sacramento, CA 95899-7377**

County:
Disbursement Claimed: <input type="checkbox"/> Disbursement 1: 34%: Execution of Grant Funding Agreement <input type="checkbox"/> Disbursement 2: 33%: Completion of Milestones in Article A-5 (a), (b), (c) <input type="checkbox"/> Disbursement 3: 33%: Completion of Milestones in Article A-5 (d), (e)

I certify that I have checked and verified the foregoing Claim Form for disbursement; that to the best of my knowledge and belief it is a true and correct statement of work performed and milestones completed; has been inspected by me and/or by my duly authorized representative and that it has been performed and/or completed in full accordance with requirements of the Grant Funding Agreement; and that partial payment of the Grant Amount claimed and requested by me is correctly made based upon milestones completed to date.

Signature

Title

_____	_____
Name	Date

ATTACHMENT 3

FISCAL AGENT AGREEMENT

FISCAL AGENT AGREEMENT

This FISCAL AGENT AGREEMENT (this “Agreement”) is entered into as of _____, 20__ (the “Effective Date”) between **Michael J. Miller, Monterey County Auditor-Controller** (“Fiscal Agent”) and the State of California Department of Public Health (“State”), who each hereby agrees as follows.

RECITALS

A. State has entered a Grant Funding Agreement with The County of Monterey (the “County”) under the Safe Drinking Water State Revolving Fund Law of 1997 (the “Funding Agreement”), whereby State has made or will make a one-time lump sum Grant payment to Fiscal Agent in the Grant Amount of \$879,000.00 (the “Grant”).

B. The Funding Agreement requires or will require, among other things, that State engage the services of a fiscal agent to assist in holding and managing the Grant Amount in trust, and disbursing Grant funds to County upon instruction by State.

C. Fiscal Agent will establish and manage a deposit account number(s) _____ maintained by Fiscal Agent consisting of all funds now or hereafter deposited into such account(s) (collectively, the “Account”).

D. In connection with the foregoing, State is requesting that Fiscal Agent enter into this Agreement in order to perform services as State’s fiscal agent and manage the disbursement of Grant Amount in the Account pursuant to the terms of that certain Grant Funding Agreement between the parties of even date herewith (the “Grant Funding Agreement”).

E. For valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Definitions.

a. “Business Day” means a day, other than a Saturday, Sunday or holiday on which the applicable party is open for business at the location to which the communication is sent.

b. “Disposition Instruction” means an instruction to Fiscal Agent directing the disposition of the funds in the Account.

c. “UCC” means the Uniform Commercial Code of the jurisdiction whose law governs this Agreement or, if relevant to any matter other than the meaning of a defined term, the Uniform Commercial Code of the jurisdiction whose law applies to the matter under the choice of law rules of the jurisdiction whose law governs this Agreement. All capitalized terms defined in the UCC (as hereinafter defined) and not otherwise defined in this Agreement shall have the same meaning in this Agreement as in the UCC, and the rules of interpretation in Article 1 of the UCC shall apply to the interpretation of this Agreement.

d. Any defined term used herein, which term is not defined by the UCC, shall have the meaning set forth in the Grant Funding Agreement.

2. Fiscal Agent’s Responsibility.

a. Fiscal Agent shall perform the following services:

(i) Establish a separate deposit Account, to which State shall disburse a one-time lump sum Grant Amount. The Account shall be used solely for holding and managing the Grant funds. Funds in the Account must not bear or earn interest.

(ii) Receive, accept and hold the Grant Amount from State pursuant to the terms of the Grant Funding Agreement and deposit it to the Account.

(iii) Upon receipt of Disposition Instructions from State, the Fiscal Agent shall disburse Grant funds to County pursuant to the terms of such Disposition Instruction.

(iv) County shall account for the Grant funds disbursed pursuant to this Agreement separately from all other County's funds. Fiscal Agent shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles. Fiscal Agent shall keep complete and accurate records of all receipts and disbursements of such funds.

b. Fiscal Agent shall have no responsibility or liability to State for complying with any Disposition Instruction, order or other instruction, whether oral or written, concerning the Account. Fiscal Agent shall not have any liability to State for losses or damages resulting from any failure to comply with Disposition Instructions relating to the Account or delay in complying with any Disposition Instruction or any other instruction if (i) compliance with any Disposition Instruction or any other instruction would require

Fiscal Agent to violate any then-existing injunction or order of any court of competent jurisdiction, including without limitation in any bankruptcy case under Title 11 of the United States Code, or (ii) the failure or delay is due to circumstances beyond Fiscal Agent's reasonable control. Without limiting the foregoing, in no event shall Fiscal Agent have any liability, directly or indirectly, for any special, indirect, punitive, exemplary or consequential losses or damages, including without limitation lost profits, whether or not any claim for such losses or damages is based on tort or contract or Fiscal Agent knew or should have known the likelihood of such losses or damages in any circumstances.

c. Fiscal Agent may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party. Without limiting the foregoing, Fiscal Agent may (but shall not be obligated to) require that State from time to time deliver to Fiscal Agent such documentation as Fiscal Agent may reasonably request to evidence the authority of those entities or individuals purporting to give Disposition Instructions or any other instructions on behalf of State to Fiscal Agent hereunder.

3. Control of Account.

a. Statements. Fiscal Agent shall provide the original Account statement for the Account to State for its records.

b. Sole Disposition. Fiscal Agent represents and warrants to State that Fiscal Agent has not entered into, and covenants with State that it will not enter into, any agreement with any other person or entity by which Fiscal Agent is obligated to comply with instructions from such other person or entity as to the disposition of funds from the Account or other dealings with the Account. Fiscal Agent will promptly notify State if any other person or entity claims that it has a property interest in the Account.

c. Recordkeeping. Fiscal Agent further represents and warrants to State that Fiscal Agent has marked its books and records to indicate that State has the right to control the Account as set forth herein.

4. Indemnity. State will indemnify Fiscal Agent and its officers, directors, employees and agents against any and all losses, claims, liabilities and expenses arising out of this Agreement (including without limitation all fees and costs incurred by Fiscal Agent in complying with Disposition Instructions or any other instructions or requests given by State hereunder and reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the losses, claims, liabilities or expenses are determined by a court of competent jurisdiction to be caused by Fiscal Agent's gross negligence or willful misconduct. The obligations of State under this Section 4 shall survive the termination of this Agreement and the resignation or removal of Fiscal Agent.

5. Termination; Survival.

a. State may terminate this Agreement by written notice to Fiscal Agent.

b. This Agreement may be terminated by Fiscal Agent only as follows: (i) immediately upon notice to the other parties if Fiscal Agent becomes obligated to terminate this Agreement or to close the Account under any statute, rule or regulation or any order, judgment, decree or injunction, or a garnishment, restraining notice or other legal process, directing, or prohibiting or otherwise restricting, the disposition of the funds in the Account, binding upon Fiscal Agent; (ii) without limiting the foregoing, with written consent of State which may not be unreasonably withheld but may be conditioned on State's ability to transfer the Account to a financial institution that agrees to substantially undertake Fiscal Agent's obligations under this Agreement.

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

7. Entire Agreement. This Agreement is the entire agreement among the parties regarding the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter. To the extent that any provision in this Agreement conflicts with any provision in any other agreement between Fiscal Agent and State, the provision in this Agreement shall control.

8. Amendments. No amendment of this Agreement will be binding unless it is in writing and signed by State and Fiscal Agent, and no waiver of any right under this Agreement will be binding unless it is in writing and signed by the party to be charged.

9. Severability. To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

10. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of Fiscal Agent and State and their respective successors and assigns. Notwithstanding the foregoing, Fiscal Agent shall not assign, transfer or delegate any of its rights or obligations under this Agreement without prior written consent of State, which may be withheld at its sole discretion. Any banking association or corporation into which Fiscal Agent may be merged, converted or with which Fiscal Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Fiscal Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of Fiscal Agent shall be sold or otherwise transferred, shall succeed to all Fiscal Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding

11. Notices. All notices, instructions or other communications to a party under this Agreement shall be in writing and shall be sent to the party's address for notices set forth

below or to such other address as shall be designated by such party by notice given to the other parties, and, except as otherwise expressly provided for herein, will be effective on receipt.

12. No Agency, Etc. Nothing contained in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between State and Fiscal Agent.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument. The foregoing is hereby acknowledged and agreed to, effective as of the Effective Date.

STATE:

State of California
Department of Public Health

By: _____

Name: _____

Title: _____

Address for notices:

State of California
Department of Public Health,
Division of Drinking Water and Environmental Management,
Attention: Small Water Systems Unit
1616 Capitol Avenue, MS 7408
P.O. Box 997377, MS 7418
Sacramento, California 95899-7377
Telephone: _____
Facsimile: _____

[Signatures continue on following page.]

FISCAL AGENT:

By: _____

Name: _____

Title: _____

Address for notices:

Attention: _____

Telephone: _____

Facsimile: _____