

1.2 Eligible Applicant Documentation

BVWSD, a public agency, is one of the signatories to the Kern IRWM Plan Participation Agreement and a member of the Kern IRWM Group. It is an appropriate entity to submit the 2014 Drought Solicitation Implementation Grant application materials on behalf of the Kern IRWM Group and the application project proponents. BVWSD has the authority to enter into a grant agreement with the California Department of Water Resources. The questions listed in the Proposal Solicitation Package are answered as follows:

- *Is the applicant a local public agency as defined in Appendix B of the 2014 Guidelines? Please Explain?*

The BVWSD is a local public agency. The District is a California Water Storage District, organized and existing pursuant to the California Water Storage District Law (California Water Code, §§ 39000 et seq.). The District satisfies the definition of 'local agency', which is described in the CWC 10701(a) as any city, county, district, agency, or other political subdivision of the state for the local performance of governmental or proprietary functions within limited boundaries.

- *What is the statutory authority or other legal authority under which the applicant was formed and is authorized to operate?*

The District is a California Water Storage District, organized and existing pursuant to the California Water Storage District Law (California Water Code, §§ 39000 et seq.).

- *Does the applicant have the legal authority to enter into a grant agreement with the State of California?*

The District has the authority to enter into a Water Code Section 10795.8 grant contract with the Department of Water Resources under the authority vested in the District pursuant to Water Code sections 43000, 43150, 43151, 43152, and 44000. Specifically, Water Code section 43151 authorizes a Water Storage District to "...enter into any agreement with the United States

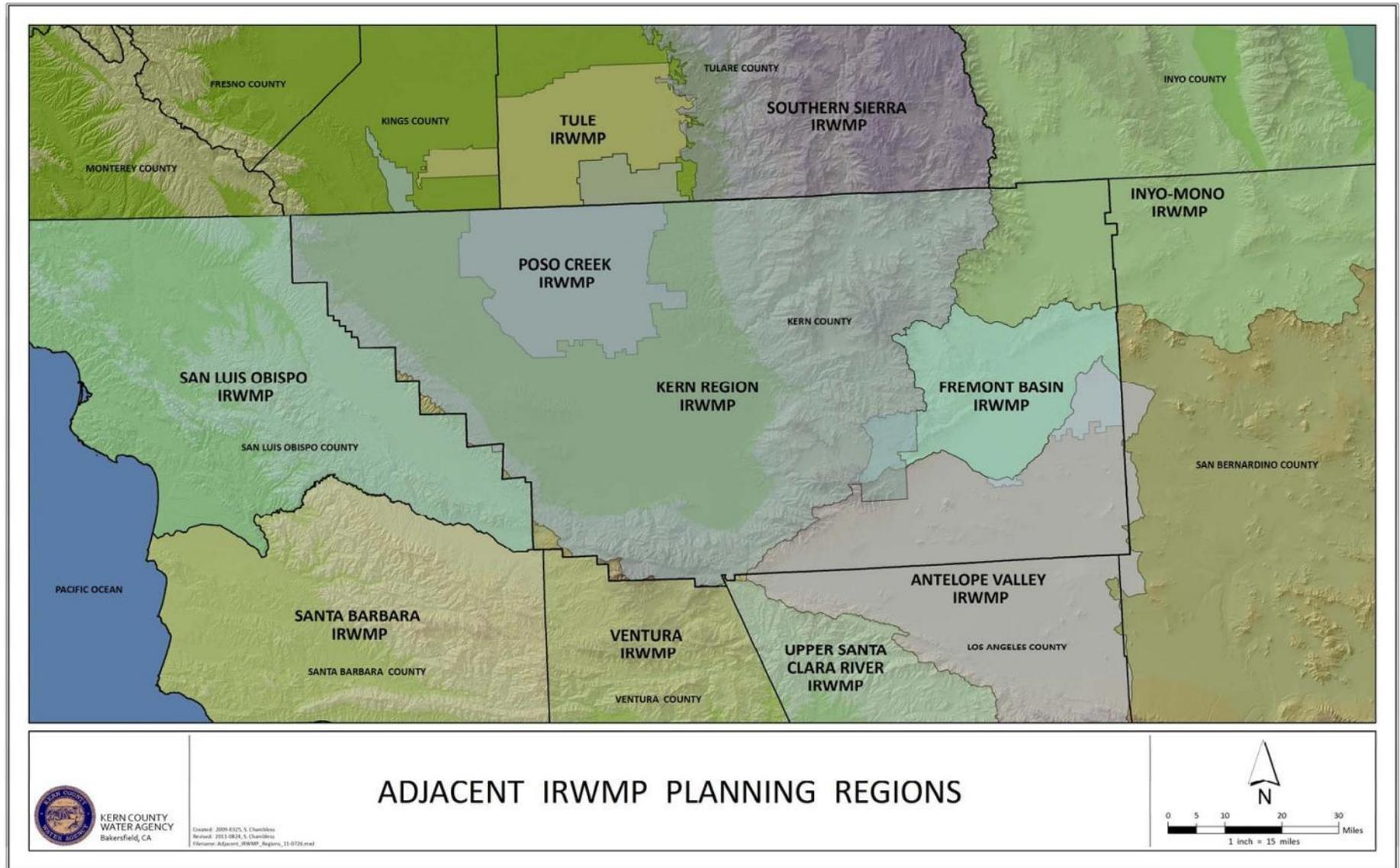


Figure 1.2-1: Adjacent IRWMP Planning Regions

or with any state, county, district, public corporation, or municipality of any kind, for the purpose appertaining to or beneficial to the project of the district, and it may do any acts necessary or proper for the performance of the agreement.” Furthermore, Water Code section 44000 provides a Water Storage District “... may cooperate and contract with the state, the department, any other district, or the United States under any laws of the state or the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof, or supplementary thereto, or under any other act of Congress heretofore or hereafter enacted authorizing or permitting the cooperation or contract.”

- *Describe any legal agreements among partner agencies and/or organizations that ensure performance of project and tracking of funds.*

Prior to BVWSD signing a funding contract with DWR, each implementing agency that will receive funding will enter into and execute a Subgrant Agreement with BVWSD that will include, at a minimum, commitments on the following topics:

- The implementing agency will agree to, by extension, all of the conditions and requirements that are included in the funding contract between DWR and BVWSD.
- Verify that the implementing agency has sufficient available funds to proceed with their project as planned with the knowledge that the grant program is a reimbursement program and that they must incur costs before those costs can be invoiced to DWR through BVWSD.
- That the implementing agency will submit all the identified deliverables in the proposal and all future reimbursement requests in a timely manner to DWR through regular submittals to BVWSD.
- That the implementing agency will accomplish project monitoring, project assessment and collection of performance measures in a timely manner and relay that information back to DWR through submittals to BVWSD.

An example of the Subgrant Agreement from the Round 2 Implementation Grant project proponents is included **Appendix 1.2-A**. A Subgrant agreement similar to this example will be executed by BVWSD and the proponents from this Application.

Appendix 1.2-A

Example Sub-grant Agreement between Applicant and Project Sponsors

**PROPOSITION 84
ROUND 2 INTEGRATED REGIONAL WATER MANAGEMENT SUBGRANT
AGREEMENT**

**Between the Kern Water Bank Authority; City of Bakersfield; Tehachapi-Cummings
County Water District; the City of Tehachapi; and the City of Arvin**

This Proposition 84 Round 2 Integrated Regional Water Management Subgrant Agreement (“Agreement”) is made this _____ day of _____, 2014, between the Kern Water Bank Authority (“KWBA”); the City of Bakersfield; Tehachapi-Cummings County Water District; the City of Tehachapi; and the City of Arvin (hereinafter “Sponsors”),

WHEREAS, KWBA has entered into a Grant Agreement with the State of California Department of Water Resources (“State”) for the purpose of funding projects associated with the Kern Integrated Regional Water Management Plan (hereinafter “IRWM Plan”); and

WHEREAS, the Grant Agreement between KWBA and the State, which is known as “Grant Agreement Between the State of California (Department of Water Resources) and Kern Water Bank Authority, Agreement Number 4600010582, Proposition 84 Round 2 Integrated Regional Water Management (IRWM) Implementation Grants California Public Resources Code § 75026 Et Seq.” (hereinafter “Grant Agreement”), is attached as Exhibit “A” to this Agreement and is incorporated by this reference herein; and

WHEREAS, the Grant Agreement contemplates providing funds for one grant administration project and five component water enhancement projects associated with the IRWM Plan (hereinafter “Component Projects”) that will be carried out by various public agencies with authority and responsibility for water facilities and programs within Kern County; and

WHEREAS, the Grant Agreement provides that KWBA will act as the Grant Administrator of the Grant Agreement, will coordinate the completion of the Component Projects with the Sponsors, which are the agencies responsible for completing those projects will act as an intermediary between the State and the Sponsors, will be responsible for preparing and

submitting invoices to State and administering grant funds to Sponsors, and will be in charge of overall project management; and

WHEREAS, the Grant Agreement provides that the City of Bakersfield; the Tehachapi-Cummings County Water District; the City of Tehachapi; the Kern Water Bank Authority; and the City of Arvin will each be a Sponsor of a Component Project; and

WHEREAS, Project 1, Grant Administration, will be sponsored and carried out by KWBA; Project 2, Urban Bakersfield Water Use Efficiency Project, will be sponsored and carried out by City of Bakersfield; Project 3, Tehachapi Regional Water Use Efficiency Project, will be sponsored and carried out by Tehachapi-Cummings County Water District; Project 4, Snyder Well Intertie Pipeline for Irrigation and Nitrate Removal Project, will be sponsored and carried out by City of Tehachapi; Project 5, Kern Water Bank Recharge and Recovery Enhancement Project, will be sponsored and carried out by the Kern Water Bank Authority; and Project 6, Sycamore Road Flood Reduction Project, will be sponsored and carried out by the City of Arvin; and

WHEREAS, Sponsors (including KWBA for costs associated with Project 5) are willing to pay their share of KWBA's costs of administering the Grant Agreement pursuant to Project 1; and

WHEREAS, Sponsors are willing to meet all requirements and bear responsibility for all liabilities under the Grant Agreement for their respective Component Projects, including providing matching funds or in-kind matching activities.

THEREFORE, FOR VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, IT IS MUTUALLY AGREED BY THE PARTIES THAT:

1. KWBA shall act as grantee under the Grant Agreement on behalf of the Sponsors, and shall, as an eligible grant recipient, enter in to the Grant Agreement with the State on behalf of the Sponsors to implement the approved Component Projects of the IRWM Plan for Kern County and to administer grant requirements. KWBA may contract with third parties for the administrative services called for in the Grant Agreement.

2. KWBA shall disburse grant funds to Sponsors for work on their respective Component Projects for activities completed in accordance with the terms of the Grant Agreement, but shall only be obligated to do so upon only receipt of grant funds for that work from the State and in accordance with disbursement requirements of the Grant Agreement.

3. The Grant Agreement requires KWBA, as Grant Administrator, to submit certain documentation to the State regarding the Component Projects. KWBA shall timely submit to the State invoices, reports, and assurances received from Sponsors prepared to meet the accounting, reporting, and other requirements in the Grant Agreement for their respective Component Projects. Sponsors are responsible for submitting such documents to KWBA with sufficient time for KWBA to comply with requirements of the Grant Agreement.

4. KWBA shall account for Grant Agreement funds separately from all of KWBA's other funds in accordance with the Grant Agreement. Sponsors shall maintain books, records, and other documents pertinent to their work in accordance with the Grant Agreement.

5. a.) Sponsors shall carry out, build and/or perform, operate and maintain their respective Component Projects in accordance with all requirements for their respective Component Projects as set forth in the Grant Agreement. The terms and requirements of the Grant Agreement, or any amendment thereof, shall be controlling and mandatory for the purposes of this Agreement where those terms and requirements relate, to any extent, to the Component Projects. Each Sponsor shall fulfill all assurances, declarations, representations and commitments made by that Sponsors to either KWBA or the State in support of that Sponsor's request for grant funds. Sponsors shall meet all requirements and limitations of the Grant Agreement for their respective Component Projects.

b.) In the event any Sponsor wishes to alter the schedule, materials, methods or deliverables related to their respective Component Project as set forth in the Grant Agreement, such Sponsor shall immediately provide notice to KWBA's representative. KWBA shall timely forward Sponsor's request for alteration to the State for consideration, if necessary.

c.) As KWBA is acting as the Grant Administrator under the Grant Agreement, questions and other communications related to the Grant Agreement or performance of work

under the Grant Agreement by Sponsors shall (unless excused by KWBA) be directed to KWBA's representative for resolution with the State.

6. a.) Sponsors shall pay and provide all required grant matching funds or in-kind matching services (where applicable) for their respective Component Projects and shall provide all necessary environmental review and obtain all required permits for their respective Component Project.

b.) KWBA and Sponsors agree that the Grant Agreement Budget for each respective Component Project shall be as follows, but acknowledge that the budget outlined below is not fixed but is subject to change and does not include the individual Sponsors portions of the costs of administration pursuant to Project 1:

Project	Grant Funding	Funding Match	Total
1	\$65,193	\$56,370	\$121,563
2	\$624,157	\$201,297	\$825,454
3	\$672,255	\$67,460	\$739,715
4	\$592,875	\$24,840	\$617,715
5	\$2,311,278	\$728,803	\$3,040,081
6	\$3,746,140	\$61,197	\$3,807,337

7. KWBA will retain Provost & Pritchard Consulting Group to provide support for grant administration as described in the proposal provided in Exhibit "B". Provost & Pritchard shall track the grant administration work attributed to each Component Project separately. Each Sponsor shall pay KWBA for its share of their applicable costs as requested, but no more than once per month. Sponsors will be responsible for their share of any costs above those described in Exhibit "B" should any change orders be awarded that increase costs to KWBA.

8. **INDEMNIFICATION:**

a.) To the extent permitted by law, Sponsors shall fully indemnify, defend, and hold KWBA (including its officers, employees and agents) and each other Sponsor (including its officers, employees and agents) free and harmless from any and all claims, costs, damages, investigations, arbitrations, lawsuits, and expenses, including reasonable attorneys'

fees and expert expenses, judgments, and awards of liabilities arising out of such indemnifying Sponsor's: performance of this Agreement; work (of any kind, including planning, design, construction, maintenance, and/or operation) on their respective Component Project; failure (of any kind) to comply with the terms and requirements of the Grant Agreement; or any act or omission on their part that causes KWBA, as Grant Administrator, to fail to meet the requirements of the Grant Agreement.

b.) Each Sponsor hereby acknowledges and understands that the State may, pursuant to the Default Provisions of Paragraph 14 of the Grant Agreement: terminate the Grant Agreement; demand that funding be immediately repaid, with interest; terminate any obligation to make future payments; or take any other action to protect its interest. In the event that an act or omission by a Sponsor results in an uncured default pursuant to Paragraph 14 of the Grant Agreement which results in the State demanding a return of funding, that Sponsor shall be responsible for making an immediate payment to KWBA in an amount sufficient to cover the funds and interest demanded by the State. Said Sponsor shall be responsible for both the immediate payment demanded by the State and the entire, final obligation to the State (should it exceed the initial demand) and shall not seek or be entitled to reimbursement from KWBA or any other Sponsor, provided that the State's enforcement of the provisions of Paragraph 14 of the Grant Agreement was substantially caused by said Sponsor's default.

c.) In addition, each Sponsor understands and acknowledges that KWBA will be employing Provost & Pritchard for the benefit of this Agreement and the Sponsors. Each Sponsor agrees to indemnify, defend and hold harmless KWBA (including its officers, employees and agents) free and harmless from any and all claims, costs, damages, investigations, arbitrations, lawsuits, expenses, including reasonable attorneys' fees and expert expenses, judgments, and awards of liability arising out of KWBA's agreement with Provost and Pritchard for administrative services related to this Agreement and the Grant Agreement not arising out of KWBA's own negligence, to the extent that Provost and Pritchard is not able to make KWBA whole. Sponsors shall only be liable to indemnify KWBA for their proportional share of KWBA's losses that are not or cannot be compensated by Provost & Pritchard.

9. KWBA will also incur costs related to staff time for administration of the Grant which must be reimbursed (excluding those associated with its own Component Project). These costs are estimated to be 10% of the costs described in the proposal in Exhibit X. KWBA will invoice the Sponsors for actual administration costs at the same time the costs described in Paragraph 8 are invoiced.

10. In accordance with the “Grantee’s Responsibility” provision of the Grant Agreement (Paragraph 7 of Exhibit “A”), the Parties agree that Sponsors shall comply with all applicable laws, policies and regulations in carrying out this Agreement, their respective Component Projects, or any other acts required or contemplated by the Grant Agreement.

11. KWBA guarantees that all monies it receives for the respective Component Projects from the State under the Grant Agreement shall solely and exclusively be used for the purposes set out in this Agreement; provided, however, that KWBA shall not be responsible for any money paid out as a result of fraud, forgery or misrepresentation.

12. KWBA shall have no responsibility as Grant Administrator for maintenance of or insurance for the respective Component Projects of the Sponsors; provided, however, that KWBA shall be responsible for all duties of a Sponsor with respect to Project 5.

13. KWBA is not acting as a surety. This Agreement is not a performance, payment, completion or labor and materials bond. KWBA does not guarantee or warrant that construction of the respective Component Project of an individual Sponsor will proceed, be completed, or that the grant funds for the respective Component Project will be sufficient to meet incurred expenses. KWBA does not guarantee or warrant the plans and specifications for the respective Component Project of a Sponsor. KWBA does not guarantee or warrant any estimated construction costs of budgets set forth in either this Agreement, the grant application or the Grant Agreement. KWBA shall have no responsibility for any aspect of bidding or the selection of contractors or subcontractors to perform any aspect of the work of the respective Component Projects (except Project 5) of the Sponsors under this Agreement. Instead, KWBA is only acting as a conduit for: 1.) transfer of grant monies to Sponsors for their respective Component Projects in furtherance of the Grant Agreement; and 2.) the transmission of invoices, reports, financial

information and State disclosure assurances and other information required by the Grant Agreement to be transmitted from the Sponsors to the State.

14. KWBA does not guarantee or warrant that it will pay any invoices submitted by Sponsor and will not pay such invoices until monies for approved invoices have actually been transmitted by the State to KWBA. KWBA assumes no liability to any entity, including but not limited to, any Sponsor or any contractors or subcontractors on the respective Component Projects of the Sponsors for any delays by the State in approval or transmittal of grant monies to KWBA.

15. The Parties agree that if any Sponsor is responsible for a default pursuant to Paragraph 14 of the Grant Agreement or becomes aware that a potential default may occur in the future, that Sponsor will work to cure the default within the time period prescribed by the State. If said Sponsor fails to cure such a default, it will be liable to KWBA and all other Sponsors pursuant to Indemnification provisions of Paragraph 8(b) of this Agreement.

16. KWBA may withhold disbursements from Sponsors for breaches under this Agreement which do not constitute defaults under the Grant Agreement if the breach is not cured within 10 days from Sponsor's receipt of notice of the breach until such breach is cured to the satisfaction of KWBA.

17. It is agreed by the Parties that if any applicable federal or state budget act of the current year or any subsequent years does not appropriate sufficient funds for the grant and/or if the State terminates the Grant Agreement, then this Agreement shall be suspended or of no force and effect. In this event, except for those monies already received from State and approved for payment for the work on the Component Projects, KWBA shall have no liability to transmit any monies for work on the respective Component Projects to the Sponsors. Sponsors agree to indemnify and defend and hold KWBA harmless for any claims asserted against KWBA by any entity in the event that the applicable federal or state budget act does not appropriate sufficient funds for the Component Projects.

18. KWBA shall not be responsible for securing insurance protection against loss or damage from any source (including but not limited to the following: fire, earthquake, vandalism

or theft) to the respective Component Projects of the Sponsors (other than its own) or any pre-purchased materials. KWBA is not liable for any loss or damage resulting from the failure to secure any such insurance. Sponsors shall provide all insurance required for their respective Component Projects as required by the Grant Agreement.

19. Upon completion of construction or performance of the respective Component Project of the Sponsor or termination of this Agreement with respect to an individual Sponsor, KWBA shall: 1.) disburse to that Sponsor any remaining sums of money in the account approved by the State for payment to that Sponsor, which have not already been disbursed by KWBA; and 2.) distribute pro rata refunds to that Sponsor of unexpended administrative costs contributions. Sponsors shall be required to prepare annual Post-Performance Reports in accordance with the Grant Agreement for 10 years at their own expense.

20. Sponsors shall proceed with all reasonable diligence in: 1.) the commencement and completion of their respective Component Project; 2.) submission of written reports, financial information, insurance, bonds, and assurances required by the Grant Agreement for their respective Component Project; and 3.) submittal of requests for payment that are fully compliant with the Grant Agreement and accompanied by written verification under penalty of perjury that the request for payment is truthful and accurate and the described costs have all been incurred solely for their respective Component Project.

21. KWBA shall not be obligated to recognize any assignment of this Agreement by any Sponsor to any third party, except as agreed to in writing by both KWBA, all Sponsors and the State (if required by the Grant Agreement). Any assignment without the required written authorization is *void ab initio*.

22. Should any provision of this Agreement be found invalid, such invalidity shall not, in any way, affect the remaining provisions of this Agreement.

23. This Agreement is only for the benefit of the Parties and not for the benefit of any third party, other than the State.

24. If any provision of this Agreement conflicts with the Grant Agreement, the provisions of the Grant Agreement shall control.

25. Each sponsor shall designate in a written notice to KWBA a representative that will be responsible for making reimbursement requests to KWBA. The signature of such representative on any request for payment shall conclusively and finally establish the right of KWBA to draw checks as so requested, subject to KWBA's performance of its responsibilities as Grant Administrator to the Grant Agreement and subject to the State's transmittal of grant monies to KWBA for the respective Component Project of the Sponsor requesting payment.

26. Nothing in this Agreement shall create any contractual relationship between any contractor or subcontractor of any Sponsor and KWBA. Sponsors agree to be fully responsible to KWBA for the acts and omissions of their contractors, subcontractors, and persons either directly or indirectly employed by them or otherwise acting as an agent of the Sponsor. Sponsors' obligation to pay their contractors and subcontractors is independent of the obligation of the State to transmit monies to KWBA and KWBA's obligation to transmit monies to a Sponsor. As a result, KWBA shall have no obligation to pay monies to any contractor or subcontractor of any Sponsor (other than its own).

27. Sponsors agree that, at Sponsors' sole expense, Sponsors shall ensure that KWBA, its officers, directors, and employees and agents, shall be named as additional insured, and insured in the same amount as Sponsors, on all policies which Sponsors are required to obtain for their respective Component Projects pursuant to the Grant Agreement. Sponsors agree to provide KWBA with written documentation that it has been so named as an additional insured on all such insurance policies

28. The term of this Agreement shall be the same as, and coincide with, the term of the Grant Agreement and any extensions thereof. This Agreement shall terminate upon the earlier of: 1.) December 31, 2017 (unless extended by the Grant Agreement); 2.) completion of all obligations under the Agreement; or 3.) termination of the Grant Agreement by the State.

29. For three years after completion of the respective Component Project or longer if otherwise required by the Grant Agreement, KWBA and each respective Sponsor shall retain copies of records of: 1.) deposits into, and disbursements from, accounts for the Sponsor's respective Component Project; and 2.) request for payment from that Sponsor. Upon prior

written request, KWBA and such Sponsor shall provide reasonable access to inspect such records to each other or the State during normal business hours.

30. Each of the Parties represents and warrants that each person signing this Agreement on behalf of any of the Parties has legal authority to sign this Agreement and bind that Party.

31. Notice pursuant to this Agreement shall be sent by United States mail to the following representatives for the Parties unless notification of a change is provided.

Kern Water Bank Authority

Jonathan Parker
General Manager
1620 Mill Rock Way, Suite 500
Bakersfield, CA 93311
Phone: (661) 398-4900
E-mail: jparker@kwb.org

The City of Tehachapi

Greg Garret
City Manager
115 S. Robinson St,
Tehachapi, CA 93561
Phone: (661) 822-2200
E-mail: ggarret@tehachapicityhall.com

City of Bakersfield

Art Chianello Water Resources Manager
1000 Buena Vista Road
Bakersfield, CA 93311
Phone: (661) 326-3715
E-mail: achianel@bakersfieldcity.us

The City of Arvin

Cecilia Vela
Interim City Manager
200 Campus Drive
Arvin, CA 93203
Phone: (661)
E-mail: cvela@arvin.org

Tehachapi-Cummings County Water District

John Martin
General Manager
22901 Banducci Road, P.O. Box 326
Tehachapi, CA 93581
Phone: (661) 822-5504
E-mail: jmartin@tccwd.com

32. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

33. This Agreement has been negotiated by the Parties and shall not be construed against any Party as the drafting party.

34. This Agreement will be considered binding and effective when it has been fully executed by the Parties. This Agreement may be executed in counterpart originals, with all counterparts taken as a whole constituting the complete Agreement.

WHEREFORE, having read the foregoing and having understood and agreed to the terms of this Agreement, the Parties, on advice of legal counsel, affix their signatures below:

[SIGNATURES FOLLOW ON NEXT PAGE]

SIGNATURES

KERN WATER BANK AUTHORITY

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF BAKERSFIELD

By: _____

Printed Name: _____

Title: _____

Date: _____

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF TEHACHAPI

By: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF ARVIN

By: _____

Printed Name: _____

Title: _____

Date: _____