

Eligible Applicant Documentation:

The City of Mt. Shasta applied for the 2014 IRWM Drought Grant which occurred after January 1, 2012. As such, the City is not required to submit additional eligible applicant information.

Draft language of Subgrantee Agreements that will be completed between the City of Mt. Shasta and all project proponents to ensure performance of the Proposal and tracking of funds is attached hereto.

AGREEMENT BETWEEN  
THE CITY OF MT. SHASTA  
AND  
[SUBGRANTEE NAME]

This agreement is entered into between the City of Mt. Shasta, a political subdivision of the State of California and [SUBGRANTEE NAME]. (Collectively, the "Parties" and individually a "Party") for the purpose of receiving and distributing funds through the 2015 IRWM Grant Solicitation funded by Proposition 84 for implementation of the [SUBGRANTEE PROJECT NAME]. ("Project").

**Section 1. RESPONSIBILITIES OF SUBGRANTEE**

Pursuant to the terms and conditions of this agreement, Subgrantee shall:

- A. Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan), in accordance with Project Exhibit B (Budget) and Exhibit C (Schedule).
- B. Accept and agree to comply with all terms, provisions, conditions, and written commitments of the Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Subgrantee in the application, documents, amendments, and communications filed in support of its request for 2015 IRWM Grant Solicitation funded by Proposition 84 financing, including, but not limited to, the 2015 IRWM Solicitation Integrated Regional Water Management Funded by Proposition Guidelines ("Guidelines") and the Grant Agreement Between the State Department of Water Resources and the City ("Grant Agreement").
- C. Comply with all applicable California laws and regulations.
- D. Implement the Project in accordance with applicable provisions of the law.
- E. Fulfill its obligations under the Grant Agreement, and be responsible for the performance of the project(s).
- F. Demonstrate the availability of sufficient funds to complete Project, as stated in the Commitment Letter, by submitting the most recent 3 years of audited financial statements.
- G. Demonstrate compliance with the groundwater compliance options set forth on pages 14 and 15 of the Guidelines, dated May 2015.

- H. Submits timely Quarterly Progress Reports as required by Paragraph 19, "Submission of Reports" in the Grant Agreement.
- I. Submit deliverables as specified in Paragraph 19 of the Grant Agreement and in Exhibit A.
- J. Prior to the commencement of construction or implementation activities, submit the following:
  - 1. Final plans and specifications certified by a California Registered Civil Engineer (or geologist, as appropriate).
  - 2. Environmental Documentation
    - i. All applicable environmental permits as indicated on the Environmental Information Form,
    - ii. Documents that satisfy the CEQA process,
    - iii. Documentation that the Department of Water Resources has completed its CEQA compliance review as a Responsible Agency, and
    - iv. Written concurrence from the Department of Water Resources of CEQA documents notice of verification of environmental permit submittal.

Department of Water Resources' concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, Department of Water Resources will consider the environmental documents and decide whether to continue to fund the project(s) or to require changes, alterations or other mitigation. Subgrantee must also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, and mitigation monitoring programs as may be required prior to beginning construction/implementation.

- K. Provide other invoice documentation as required by the City.

**Section 2. RESPONSIBILITIES OF CITY**

City shall compensate Subgrantee as prescribed in sections 3 and 4 of this agreement and shall monitor the outcomes achieved by Subgrantee.

**Section 3. COMPENSATION**

Subgrantee shall receive a maximum of [\$ AMOUNT] for the services described in this agreement.

Contractor's violation or breach of agreement terms may result in fiscal penalties, withholding of compensation, or termination of agreement.

**Section 4. BILLING AND PAYMENT**

Subgrantee shall submit to the City within fifteen days of the end of the fiscal quarter and/or completion of the Project prescribed in section 1, an itemized statement or invoice of work rendered.

Should the City, or the state or federal government, disallow any amount claimed by Contractor, Contractor shall reimburse the City, or the state or federal government, as directed by the City, or the state or federal government, for such disallowed cost.

**Section 5. TERM OF AGREEMENT**

This agreement shall commence as of the last date it has been signed by both [ALL] parties and shall end [DATE].

**Section 6. TERMINATION OF AGREEMENT**

- A. If Subgrantee materially fails to perform Subgrantee's responsibilities under this agreement to the satisfaction of the City, or if Subgrantee fails to fulfill in a timely and professional manner Subgrantee's responsibilities under this agreement, or if Subgrantee violates any of the terms or provisions of this agreement, then the City shall have the right to terminate this agreement for cause effective immediately upon the City giving written notice thereof to Subgrantee. If termination for cause is given by the City to Subgrantee and it is later determined that Subgrantee was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph B of this section.
- B. The City may terminate this agreement immediately upon oral notice should funding cease or be materially decreased during the term of this agreement.
- C. The City's right to terminate this agreement may be exercised by the City Manager.
- D. Should this agreement be terminated, Subgrantee shall promptly provide to the City any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by Subgrantee pursuant to this agreement.

**Section 7. ENTIRE AGREEMENT; AMENDMENTS; HEADINGS; EXHIBITS/APPENDICES**

- A. This agreement supersedes all previous agreements relating to the subject of this agreement and constitutes the entire understanding of the parties hereto. Subgrantee shall be entitled to no other benefits other than those specified herein. Subgrantee specifically acknowledges that in entering into and executing this agreement, Subgrantee relies solely upon the provisions contained in this agreement and no others.
- B. No changes, amendments, or alterations to this agreement shall be effective unless in writing and signed by both parties. However, minor amendments that do not result in a

substantial or functional change to the original intent of this agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between Subgrantee and the City.

- C. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.
- D. If any ambiguity, inconsistency, or conflict exists or arises between the provisions of this agreement and the provisions of any of this agreement's exhibits or appendices, the provisions of this agreement shall govern.

**Section 8. EMPLOYMENT STATUS OF SUBGRANTEE**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subgrantee shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subgrantee is an independent contractor.

**Section 9. INDEMNIFICATION.**

The Subgrantee shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subgrantee's performance or nonperformance of the services or subject matter called for in this Agreement.

**Section 10. INSURANCE COVERAGE.**

- A. Without limiting Subgrantee's duty of indemnification, Subgrantee and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this agreement Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other insurance necessary to protect the City and the public with limits of liability of not less than \$1 million combined single limit bodily injury and property damage; such insurance shall be primary as to any other insurance maintained by the City.
- B. Subgrantee and any subcontractor shall obtain and maintain continuously required Workers' Compensation and Employer's Liability Insurance to cover Subgrantee, subcontractor, Subgrantee's partner(s), subcontractor's partner(s), Subgrantee's employees, and subcontractor'(s') employees with an insurance carrier authorized to transact business in the State of California covering the full liability for compensation for injury to those employed by Subgrantee or subcontractor. Each such policy shall be endorsed to state that the Workers' Compensation carrier waives its right of

subrogation against the City, its elected officials, officers, employees, agents, and volunteers which might arise in connection with this agreement. Subgrantee hereby certifies that Subgrantee is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Subgrantee shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to this agreement.

C. With regard to all insurance coverage required by this agreement:

(1) Any deductible or self-insured retention exceeding \$25,000 for Subgrantee or subcontractor shall be disclosed to and be subject to approval by the City Risk Manager prior to the effective date of this agreement.

(2) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Subgrantee or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of this agreement and continue coverage for a period of three years after the expiration of this agreement and any extensions thereof. In lieu of maintaining post-agreement expiration coverage as specified above, Subgrantee or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide the insurance coverage required hereunder for claims received and reported three years after the expiration date of this agreement.

(3) All insurance (except workers' compensation and professional liability) shall include an endorsement or an amendment to the policy of insurance which names *the City of Mt. Shasta, its elected officials, officers, employees, agents, and volunteers as additional insureds and provides that coverage shall not be reduced or canceled without 30 days written prior notice certain to the City of Mt. Shasta.* Any available insurance proceeds in excess of the specified minimum limits and coverage pursuant to the terms of this agreement shall be applicable to the Additional Insured. The additional insureds coverage shall be equal to Insurance Service Office endorsement CG 20 10 for on-going operations, and CG 20 3 7 for completed operations.

(4) Each insurance policy (except for workers' compensation and professional liability policies), or an endorsement thereto, shall contain a "separation of insureds" clause which shall read:

"Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and

b. Separately to each suit insured against whom a claim is made or suit is brought."

(5) Subgrantee shall provide the City with an endorsement or amendment to Subgrantee's policy of insurance as evidence of insurance protection before the effective date of this agreement.

(6) The insurance coverage required herein shall be in effect at all times during the term of this agreement. In the event any insurance coverage expires at any time during the term of this agreement, Subgrantee shall provide, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the term of this agreement or for a period of not less than one year. In the event Subgrantee fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of this agreement, the City may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

(7) If the endorsement or amendment does not reflect the limits of liability provided by the policy of insurance, Subgrantee shall provide the City a certificate of insurance reflecting those limits.

(8) Any of Subgrantee's Excess Insurance shall contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City.

**Section 11. NOTICE OF CLAIM; APPLICABLE LAW; VENUE**

- A. If any claim for damages is filed with Subgrantee or if any lawsuit is instituted concerning Subgrantee's performance under this agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect the City, Subgrantee shall give prompt and timely notice thereof to the City. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or 10 days following the date of service of process of a lawsuit. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Any dispute between the parties, and the interpretation of this agreement, shall be governed by the laws of the State of California. Any litigation shall be venued in Siskiyou County.

**Section 12. COMPLIANCE WITH LAWS; NON-DISCRIMINATION**

- A. Subgrantee shall observe and comply with all applicable federal, state, and local laws, ordinances, and codes that relate to the work or services to be provided pursuant to this agreement.

- B. Subgrantee shall not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.
- C. Subgrantee represents that Subgrantee is in compliance with and agrees that Subgrantee shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. sections 12101, *et seq.*), the Fair Employment and Housing Act (Government Code sections 12900, *et seq.*), and regulations and guidelines issued pursuant thereto.

**Section 13. ACCESS TO RECORDS; RECORDS RETENTION**

City, federal, and state officials shall have access to any books, documents, papers, and records of Subgrantee that are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Subgrantee or the City. Except where longer retention is required by federal or state law, Subgrantee shall maintain all records for five years after the City makes final payment hereunder. This provision shall survive the termination, expiration, or cancellation of this agreement.

Subgrantee shall maintain appropriate records to insure a proper accounting of all funds and expenditures pertaining to the work performed or the services provided pursuant to this agreement. Subgrantee shall maintain records providing information that account for all funds and expenses related to the provision of services provided pursuant to this agreement. Access to these records shall be provided to the City during working days, 8:00 a.m. to 5:00 p.m. and at other times upon reasonable notice by the City, and upon request of state and federal agencies charged with the administration of programs related to the work or services to be provided pursuant to this agreement.

Subgrantee agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by appropriate federal, state, or City audit directly related to the provisions of this agreement. Subgrantee agrees to repay the City the full amount of payment received for duplicate billings, erroneous billings, audit exceptions, or false or deceptive claims. Subgrantee agrees that the City may withhold any money due and recover through any appropriate method any money erroneously paid under this agreement if evidence exists of less than full compliance with this agreement including, but not limited to, exercising a right of set-off against any compensation payable to Subgrantee.

**Section 14. LICENSES AND PERMITS**

Subgrantee, and Subgrantee's officers, employees, and agents performing the work or services required by this agreement, shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, the County of Siskiyou, and all other appropriate governmental agencies,



influencing any City decision which may affect Subgrantee's financial interests. If required by the City's Conflict of Interest Code, Subgrantee shall comply with the ethics training requirements of Government Code sections 53234, *et seq.*

**Section 20. SEVERABILITY**

If any portion of this agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or City ordinance, the remaining provisions of this agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this agreement are severable.

**Section 21. CONFIDENTIALITY**

During the term of this agreement, both parties may have access to information that is confidential or proprietary in nature. Both parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other Party or as required by law. This provision shall survive the termination, expiration, or cancellation of this agreement.

**Section 22. APPLICATION OF OTHER AGREEMENTS**

Subgrantee and contractor's officers, agents, employees, and volunteers, and any of contractor's/Subgrantee's subcontractors shall comply with all terms and provisions imposed upon any subcontractor of the City by the Grant Agreement between the City of Mt. Shasta and Department of Water resources, attached to this agreement as Exhibit C attached and incorporated by this reference.

*SIGNATURE PAGE FOLLOWS*

IN **WITNESS WHEREOF**, City and Subgrantee have executed this agreement on the dates set forth below. By their signatures below, each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

CITY OF MT. SHASTA

Date: \_\_\_\_\_

\_\_\_\_\_  
Paul Eckert  
City Manager

Approved as to form:

\_\_\_\_\_  
City Counsel

RISK MANAGEMENT APPROVAL

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

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

**SUBGRANTEE**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Tax I.D. #: \_\_\_\_\_