

AGREEMENT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES (DWR)
AND
INDIAN WELLS VALLEY GROUNDWATER AUTHORITY, A GROUNDWATER SUSTAINABILITY
AGENCY (GSA), UNDER THE
SUSTAINABLE GROUNDWATER MANAGEMENT, TECHNICAL SUPPORT SERVICES (TSS) PROGRAM
AGREEMENT NO. 0033
CALIFORNIA WATER CODE §10729 *ET SEQ.*

- 1) PURPOSE. Pursuant to Chapter 7 (commencing with Section 10729) of Division 6, Part 2.74 of the California Water Code (CWC), the State shall provide in-kind and subcontracted technical services for investigating and gathering data on groundwater conditions in groundwater basins of California to assist Groundwater Sustainability Agencies (GSAs) in developing Groundwater Sustainability Plans (GSPs), hereinafter collectively referred to as "Technical Support Services" or "TSS."
- 2) TERM OF AGREEMENT. The term of the Agreement begins on 1/26/2021, the date the Agreement is executed by the State, and terminates upon completion of the useful life of the project which, at a minimum, is 20 years after the GSA's GSP or Alternative implementation, or when all the Parties' obligations under the Agreement are fully satisfied, whichever occurs earlier. Execution date is the date the State signs the Agreement indicated on page 4.
- 3) RELATIONSHIP OF PARTIES. The GSA is solely responsible for design, operation, and maintenance of projects to be constructed by the State as described in Exhibit A to this Agreement, Work Plan, Schedule, and Budget. Review or approval of plans, specifications, bid documents, or other construction documents by the State is solely for proper administration of the TSS by the State and shall not be deemed to relieve or restrict responsibilities of the GSA under the Agreement. The State may recommend modification to the designs, plans, or specifications prepared by the GSA to improve project outcomes, comply with well standards Bulletin 74-90, and/or construction efficiency. Such recommendations will be incorporated into the construction design at the GSA's sole discretion, but the Department may terminate this Agreement if it determines that failure to make the recommended changes may pose a threat to water quality.
- 4) CONTINUING ELIGIBILITY. The GSA must meet the following ongoing requirements to remain eligible to receive TSS:
 - a) Statutory requirements for GSA Establishment (CWC Section 10723 *et seq.*).
 - b) Statutory requirements for Alternatives (CWC Section 10733.6 *et seq.*).
 - c) Statutory requirements for GSP Initial Notification (CWC Section 10727.8 and §353.6 of the GSP Regulations [California Code of Regulations, Title 23, Division 2, Chapter 1.5, Subchapter 2]).
 - d) The basin or subbasin that the GSA occupies is current with periodic reporting requirements under DWR's California Statewide Groundwater Elevation Monitoring (CASGEM) and Sustainable Groundwater Management Act (SGMA) Programs, as applicable (CWC Sections 10920 *et seq.* and 10728, respectively).
 - e) The basin or portion of the basin managed by the GSA must not be in a current condition of overlap that would disqualify the decision of the GSA to undertake groundwater management pursuant to SGMA (CWC Section 10723.8(c)).
- 5) INDEMNIFICATION. The GSA and State will exercise reasonable precautions to avoid damage to people and property. Each agrees that it is responsible for its own actions and those of its agents, subcontractors, employees, representatives and any other person acting on their behalf or at their direction, arising out of or as a result of, or in connection with this Agreement and hereby agrees, to the extent permitted by law, to indemnify and hold the other parties and their respective officers and agents harmless, against any or asserted liability arising out of its (and its agents, subcontractors, employees, representatives and any other person acting on their behalf or at their direction) actions, either willful, negligent, or intentional, in implementing the project. Such indemnity will include any losses relating to any claim made, whether or not a court action is filed.
- 6) INDEPENDENT CAPACITY. The GSA, and the agents and employees of the GSAs, in the performance of the Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- 7) INSPECTIONS OF PROJECT. The State and GSA shall each have the right to inspect all project-related work as described in Exhibit A at all reasonable times and places during the term of the Agreement. The GSA

and DWR shall include provisions ensuring such access in all their contracts entered into pursuant to its Agreement.

- 8) DEFAULT PROVISIONS. The GSA will be in default under this TSS Agreement if any of the following occur:
- Breaches of this TSS Agreement, or any supplement or amendment to it, or any other agreement between the GSA and the State evidencing or securing the GSA's obligations.
 - Making any false warranty, representation, or statement with respect to this TSS Agreement or the application filed to obtain this TSS Agreement.
 - Failure to operate or maintain project(s) in accordance with this TSS Agreement.
 - Failure to meet any of the requirements set forth in Paragraph 4, "Continuing Eligibility."
- 9) RESPONSE TO DEFAULT. Should an event of default occur, the State shall provide a notice of default to the GSA and shall give the GSA at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the GSA. If the GSA fails to cure the default within the time prescribed by the State, the State may do any of the following:
- Terminate any obligation to perform future project work as described in Exhibit A.
 - Terminate the TSS Agreement.
 - Take any other action that it deems necessary to protect its interests.
- 10) ENTRY PERMIT OR OTHER DOCUMENT. For projects involving construction of improvements on publicly owned real property, including the installation of groundwater monitoring well(s), the GSA shall execute or obtain from the owner(s) of the real property a Land Use Agreement (LUA) or a renewable Temporary Entry Permit (TEP) document authorizing DWR's officers, employees, agents, and contractors permission to enter said owner's property with all necessary equipment to perform the work described under this Agreement in Exhibit A, including collection of data for the useful life of the project. Such work will be subject to site specific provisions to be described in the LUA or TEP prior to implementation of field/construction activities. In the event that a project is to be located on privately owned real property, the GSA shall be responsible for acquiring any necessary easement granting property rights to conduct the project as described in this agreement and shall execute a LUA or TEP providing DWR access to the site as described in this section. To the extent the GSA is unwilling or unable to obtain the property rights and access DWR deems as necessary to perform the work described under this Agreement in Exhibit A, DWR may terminate any obligation to perform future project work in accordance with Section 9.a above.
- 11) WORK AREA SAFETY. Prior to initiating any field work activities including initial site visits and reconnaissance, the State will perform a preliminary review of property to document the physical and environmental conditions and prepare a Job Hazards Analysis (JHA) that considers real and perceived job safety hazards related to site conditions and the work to be performed. The JHA will be reviewed and appropriately updated as site conditions and work activities progress or change. The JHA will outline any required safety precautions to be followed and any personal protective equipment to be worn for DWR staff to safely perform the work. All State and GSA officers, employees, agents, and contractors working at or visiting the project work area will be required and agree to read, be briefed on, and sign the JHA as acknowledgement of their awareness of its safety provisions before entering the work area on each day they are present.
- 12) OPERATION AND MAINTENANCE OF PROJECT. For the useful life of projects and in consideration of the services provided by the State, the GSA agrees to ensure or cause to be performed the commencement and continued operation of each project, and shall ensure or cause each project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, operation, closure, or removal. The GSA or their successors may, with the written approval of the State, transfer this responsibility to use, manage, and maintain the project. For purposes of this Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of

funds necessary to replace, reconstruct, close in-place, or remove capital assets or basic structures. Refusal of the GSA to ensure operation and maintenance of the project(s) in accordance with this provision may, at the option of the State, be considered a breach of this Agreement and may be treated as default under Paragraph 9, "Default Provisions."

- 13) DESTRUCTION OF WELLS. At any point when a well drilled for purposes of the Project shall be abandoned, the GSA shall destroy the abandoned well in accordance with prevailing well completion and destruction standards.
- 14) NOTIFICATION OF STATE. The GSA shall promptly notify the State, in writing, of the following items:
- a) Events or proposed changes that could affect the scope, budget, or schedule of DWR's performance under this TSS Agreement. The GSA agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to the State and the State has given written approval for such change. Substantial changes generally include changes to the work plan, schedule or term, and budget.
 - b) Any public or media event publicizing the accomplishments and/or results of this TSS Agreement that provide an opportunity for attendance and participation by the State's representatives. The GSA shall make such notification at least 14 calendar days prior to the event, or if the GSA does not have 14 calendar days' notice, as soon as practicable.
 - c) Any inspections of completed project work by a California Professional Engineer or Geologist. The GSA shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide the State the opportunity to participate in the inspection, or if the GSA does not have 14 calendar days' notice, as soon as practicable.
- 15) NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this TSS Agreement shall be in writing. Notices may be transmitted by any of the following means:
- a) By delivery in person.
 - b) By certified U.S. mail, return receipt requested, postage prepaid.
 - c) By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.
 - d) By electronic means.

Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery of receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the addresses set forth in Paragraph 16. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

- 16) PROJECT REPRESENTATIVES. The Project Representatives during the term of this TSS Agreement are as follows:

Department of Water Resources
Steven Springhorn
acting Deputy Director
Statewide Groundwater Management
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 651-9273
e-mail: steven.springhorn@water.ca.gov

Indian Wells Valley Groundwater Authority
Ronald Strand
Acting General Manager
P.O. Box 1329
Ridgecrest, CA 93556-1329
Phone: (760) 384-5555
e-mail: rstrand@ridgecrest-ca.gov

Direct all inquiries to:

Department of Water Resources
Program Manager
Steven Springhorn
acting Deputy Director
Statewide Groundwater Management
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 651-9273
e-mail: steven.springhorn@water.ca.gov

Project Manager for GSA
Jean Moran
Stetson Engineers, Water Resource Manager for
Indian Wells Valley Groundwater Authority
785 Grand Avenue, Suite 202
Carlsbad, CA 92008
Phone: (760) 730-0701
e-mail: jeanm@stetsonengineers.com

DWR TSS Region Office Lead
Eric Gorman
Senior Engineering Geologist
DWR Southern Region Office
770 Fairmont Avenue, Suite 200
Glendale, CA 91203
Phone: (818) 549-2344
e-mail: eric.gorman@water.ca.gov

DWR TSS Project Lead
Jason Preece
Senior Engineering Geologist
Sustainable Groundwater Management Office
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 651-9636
e-mail: jason.preece@water.ca.gov

Either party may change its Project Representative, Program Manager, or Project Manager upon written notice to the other party.

17) STANDARD PROVISIONS. The following Exhibits are attached and made a part of this TSS Agreement by this reference:

- Exhibit A – Work Plan, Schedule, and Budget
- Exhibit B – Standard Conditions

IN WITNESS WHEREOF, the parties hereto have executed this TSS Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

Steven Springhorn

Ronald Strand

Steven Springhorn, acting Deputy Director
Statewide Groundwater Management

Ronald Strand, Acting General Manager

Date 1/26/2021

Date 1/26/2021

Approved as to Legal Form and Sufficiency

Erick Soderlund

Erick Soderlund, Staff Counsel
Office of Chief Counsel

Date 1/26/2021

Exhibit A

Work Plan, Schedule, and Budget

Work Plan

Project Description (general)

The project consists of the drilling and construction of one set of triple-nested groundwater monitoring wells as summarized in the following table.

Project Name: Indian Wells Valley 01	DWR Region Office: Southern Region Office (Glendale)	GSA Name: Indian Wells Valley Groundwater Authority	Property Owner Name: US Bureau of Land Management
Project Location: 35.549403, -117.910795 APN 341-060-06-00-2	Borehole Depth: 1,500 feet below ground surface (bgs) or to depth of bedrock, whichever is shallower	Target Well Screen Depths: 300-340 feet bgs 800-840 feet bgs 1,300-1,340 feet bgs (subject to change based on lithologic geophysical logs)	Well Casing Type and Diameter: Schedule 80 CPVC (shallow and intermediate) and low carbon steel (deep); 3 inches
Other Services: Drilling cuttings logged by a geologist or engineer; geophysics; well development; installation of well surface completion (steel monument riser and bollards)			

Coordination of project activities will be managed by DWR staff from the above-listed Region Office. All site activities will be overseen by DWR staff.

Roles and Responsibilities

Task	DWR Role	GSA Role
Project Management and Resource Coordination	<input checked="" type="checkbox"/>	<input type="checkbox"/>
USA Clearance	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Environmental/Cultural Reviews	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Traffic/Safety Clearance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Drilling Permit	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CEQA Requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Access Permission	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dust and Noise Mitigation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Waste Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Drilling and Well Construction	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Well Development	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Data Collection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wellhead Survey	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1 – CEQA and Site Clearances

DWR will assess the proposed well location prior to commencing any construction. DWR's site evaluation may include a review of information provided by the GSA, independent on-site review, or both. If DWR determines that an on-site review is required, the GSA shall make the site accessible to DWR staff or contractors. If DWR determines that no

exceptions exist to the project being exempt from the California Environmental Quality Act, DWR will file a Notice of Exemption (NOE) with the Office of Planning and Research. If DWR determines that filing a NOE is not appropriate, the GSA may propose another well location; however, DWR will not undertake any construction unless DWR determines that the site provided is eligible for a NOE.

The GSA and the driller will contact Underground Service Alert (811) for Southern California and conduct utility locating, as needed, to ensure safe execution of the project's construction.

2 – Permitting

Site Entry

The project is located on property owned by the US Bureau of Land Management (BLM). The GSA will contact and negotiate with BLM to obtain any necessary encroachment permits and agreements providing DWR and the GSA accessibility to construct, operate and/or maintain groundwater monitoring equipment as described herein for the useful life of the project.

Other

A well drilling and construction permit will be obtained by the GSA. DWR will not make reimbursements for any permit fees.

3 – Construction Activities

Dust Mitigation

- Vehicles driven on unpaved roads will travel at speeds that minimize dust. As discussed with staff from the Bureau of Land Management during the site walk on November 6, 2020, vehicle speeds will not exceed 20 mph.
- If controlling traveling speeds on unpaved roads is not sufficient to control dust, then unimproved roads traveled on by work crews and equipment will be sufficiently sprayed with water at the beginning of each day. Wetting will occur more frequently during the day or night as needed to prevent the occurrence of dust nuisance.

Drilling and Well Construction

Work crews will efficiently mobilize to the work site with all equipment necessary to construct the project improvements. On the first and every day of field work, a minimum 10-minute safety meeting will be conducted by work crews to review, discuss, and sign a daily Job Hazard Analysis sheet. The following details outline the project construction:

1. The work site will be set-up for efficient execution of work tasks.
2. Mud-rotary drilling, drill fluid conditioning, and drill cuttings containment will be performed to:
 - a. Drill one borehole that will accommodate three 3-inch-diameter groundwater monitoring wells.
 - b. Drill a pilot hole, not to exceed 10 inches in diameter, to a total depth of no more than 1,500 feet bgs or to bedrock, whichever is shallower.
 - c. E-log the total borehole depth including: natural gamma ray; spontaneous potential; short-normal; long-normal; lateral (point) electrical resistivity; and caliper log.
 - d. Construct three nested groundwater monitoring wells as follows:
 - i. Final reamed borehole diameter not to exceed 16-inch diameter.
 - ii. Well casings and screens will be constructed using Schedule 80 chlorinated PVC (CPVC) for the shallow and intermediate completions; low carbon steel will be used for the deep completion.
 - iii. Well Specifications are targeted to be:
 1. 300 to 340-foot depth water-bearing zone: set approximate 40-foot-long casing screen and a 20-foot-long sump (blank casing, Schedule 80 CPVC) below the screen.

2. 800 to 840-foot depth water-bearing zone: set approximate 40-foot-long casing screen and a 20-foot-long sump (blank casing, Schedule 80 CPVC) below the screen.
 3. 1,300 to 1,340-foot depth water-bearing zone: set approximate 40-foot-long casing screen and a 20-foot-long sump (blank casing, low carbon steel) below the screen.
 - iv. A surface well seal of appropriate mixture and depth to meet permit requirements will be set.
 - v. The well will be finished at the surface with a steel monument riser and protective bollards.
3. The following tasks will be completed under the direction of a Professional Geologist:
 - a. Supervision of the drilling, well construction, and well development operations
 - b. Logging of drill cuttings and creation of a lithologic log
 - c. Determination of the hydrostratigraphic interpretation and final well design
 - d. Creation of a final as-built well construction diagram
 4. Work crews will efficiently demobilize all equipment used to construct the project improvements, clean up all work-related waste and unused materials, and return work areas to their original condition.

4 – Well Development

Well development will occur no sooner than 48 hours after the well surface seal has been completed. Well development will be accomplished by a combination of swabbing, surging, bailing, and purging of suspended solids with a submersible or air-lift pump. Well development will be performed until there is good hydraulic connection between the formation and the well screen. Termination of development is at the discretion of the DWR Engineering Geologist.

5 – Data Collection

Wellhead Reference Point Survey

DWR will have the elevation and coordinates of a permanent reference point and the ground surface at the wellhead surveyed under the direction of a California Licensed Surveyor. The reference point will: 1) be permanently marked, 2) easily transferrable to the gradations on a water level meter or tape, and 3) appropriately detailed in the surveyor's report.

Groundwater Level Measurements

After well development is complete and groundwater levels have stabilized, groundwater elevation measurements will be collected and recorded by DWR with a water level meter or tape. DWR and the GSA will then corroborate on the accuracy of the measurements. Continued groundwater monitoring and reporting to DWR data systems (SGMA or CASGEM portals, whichever is applicable) will be performed by the GSA for the useful life of the wells.

Groundwater Quality

After well development and groundwater levels have stabilized, the GSA will analyze water samples for water quality and provide the initial sampling results to DWR for inclusion in the final report.

6 – Final Reporting

Upon completion of project construction, activities will be summarized by DWR, with applicable input from the GSA, in a final report containing descriptions of project objectives, office and field activities, related outcomes, and field-collected data documentation. The report will contain the following items.

- An Executive Summary
- The project title and work objective
- Names of partnering agencies
- Description of work performed and the outcome
- Log of methods used and observed lithologies during drilling

- Borehole geophysical logs
- As-built well construction diagram(s)
- Description of well development activities
- Copy of the Well Completion Report filed by the drilling contractor through DWR's Online System for Well Completion Reports
- Descriptions of any ancillary equipment installed
- Groundwater sample testing results
- Field measurements

Schedule

Task	Subtask	Dates
1 – Site Clearances		Fall 2020 and Winter 2021
2 – Permitting		Winter 2021
3 – Construction Activities		Winter 2021
4 – Well Development		Winter 2021
5 – Data Collection		Spring 2021 through the useful life of the project
6 – Final Reporting		Summer 2022

Budget

Budget Category	DWR Contribution	GSA Contribution	Totals
1 – Site Clearances	\$ 5,000	\$ 28,146	\$ 33,146
2 – Permitting	\$ 5,000	\$ 5,188	\$ 10,188
3 – Construction Activities	\$ 611,000	\$ 18,200	\$ 629,200
4 – Well Development	\$ 61,500	\$ 0	\$ 61,500
5 – Data Collection	\$ 1,000	*\$ 32,000	\$ 33,000
6 – Final Reporting	\$ 5,000	\$ 0	\$ 5,000
TOTALS	\$ 688,500	\$ 83,534	\$ 855,568

*The GSA data collection cost is the estimated cost for 20 years of groundwater level and groundwater quality monitoring.

Exhibit B
Standard Conditions

- B.1) AMENDMENT:** The Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the GSA for amendments must be in writing stating the amendment request and the reason for the request.
- B.2) APPROVAL:** The Agreement is of no force or effect until signed by all parties to the Agreement.
- B.3) BUDGET CONTINGENCY:** If the Budget Act of the current year covered under the Agreement does not appropriate sufficient funds for the TSS Program, the Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the State to perform any services under the Agreement. In this event, the State shall have no liability to furnish any considerations under the Agreement and the GSA shall not be obligated to perform any provisions of the Agreement. If funding for any fiscal year after the current year covered by the Agreement is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel the Agreement with no liability occurring to the State or offer an Agreement amendment to the GSA to reflect the reduced amount of services to be provided.
- B.4) CEQA:** Activities performed under the Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.). Information on CEQA may be found at the following links:
- Environmental Information: <https://www.opr.ca.gov/ceqa/>
- California State Clearinghouse Handbook: https://www.opr.ca.gov/docs/SCH_Handbook_2012.pdf
- B.5) CLAIMS DISPUTE:** Any claim that the GSA may have regarding performance of the Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the State's Project Representative, within thirty (30) days of the GSA's knowledge of the claim. The State and the GSA shall then attempt to negotiate a resolution of such claim and process an amendment to the Agreement to implement the terms of any such resolution.
- B.6) DELIVERY OF INFORMATION, REPORTS, AND DATA:** The GSA agrees to expeditiously provide throughout the term of the Agreement, such reports, data, information, and certifications as may be reasonably required by the State. If such data is generated and transmitted on a continuous basis (e.g., real-time with telemetry), the State shall also have full access to such capabilities.
- B.7) FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL:** To the extent that the GSA provides professional engineering services as an integral component of the Project, the GSA shall provide for any final inspection and certification by the appropriate licensed professional (California Professional Civil Engineer or Geologist) that their work has been completed in accordance with licensure law and any submitted final plans and specifications and any modifications thereto and in accordance with the Agreement.
- B.8) GSA COMMITMENTS:** The GSA accepts and agrees to comply with all terms, provisions, conditions and commitments of the Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the GSA in the application, documents, amendments, and communications filed in support of its request for Technical Support Services.
- B.9) GSA NAME CHANGE:** Approval of the State's Program Manager is required to change the GSA's name as listed on the Agreement. Upon receipt of legal documentation of the name change the State will process an amendment.
- B.10) GOVERNING LAW:** The Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

- B.11) MODIFICATION OF OVERALL WORK PLAN:** At the request of the GSA, the State may at its sole discretion approve non-material changes to the portions of Exhibit A which concern the scope, schedule, and budget without formally amending the Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the project budget amount. Non-material changes with respect to each Project schedule are changes that will not extend the term of the Agreement. Requests for non-material changes to the budget and schedule must be submitted by the GSA to the State in writing and are not effective unless and until specifically approved by the State's Project Manager in writing.
- B.12) OPINIONS AND DETERMINATIONS:** Where the terms of the Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- B.13) PERFORMANCE AND ASSURANCES:** The GSA agrees to faithfully and expeditiously perform or cause to be performed all Project work in their charge as described in Exhibit A, "Work Plan" and to apply State resources received only to its charge in developing one or more GSPs in accordance with applicable provisions of the law.
- B.14) PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The GSA shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project without prior permission of the State.
- B.15) REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of the 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.
- B.16) RIGHTS IN DATA:** The GSA agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of the Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act., Cal. Gov't Code §6250 *et seq.* The GSA may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under the Agreement, subject to appropriate acknowledgement of credit to the State for financial support. The GSA shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- B.17) SEVERABILITY:** Should any portion of the Agreement be determined to be void or unenforceable, such portion shall be severed from the whole and the Agreement shall continue as modified.
- B.18) STATE REVIEWS:** The parties agree that review or approval of project applications, documents, permits, plans, and specifications or other project information by the State is for administrative purposes only and does not relieve the GSA of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out their commitments to completing the project.
- B.19) SUCCESSORS AND ASSIGNS:** The Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of the Agreement or any part thereof, rights hereunder, or interest herein by the GSA shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose.
- B.20) TERMINATION BY THE GSA:** Subject to the State approval which may be reasonably withheld, the GSA may terminate the Agreement and be relieved of contractual obligations. In doing so, the GSA must provide a reason(s) for termination and is responsible for reimbursing costs incurred by DWR on the project as described in Exhibit A up to the time of notice of termination.
- B.21) TERMINATION FOR CAUSE:** Subject to the right to cure under Paragraph 9, the State may terminate the Agreement and be relieved of any commitments should the GSA fail to perform the requirements of the Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 9 of this Agreement.

- B.22) TERMINATION WITHOUT CAUSE:** The State may terminate the Agreement without cause on a 30-day advanced written notice.
- B.23) THIRD PARTY BENEFICIARIES:** The parties to the Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of the Agreement, or any duty, covenant, obligation or understanding established herein.
- B.24) TIMELINESS:** Time is of the essence in the Agreement.
- B.25) WAIVER OF RIGHTS:** None of the provisions of the Agreement shall be deemed waived, unless expressly waived, in writing. It is the intention of the parties hereto that, from time to time, either party may waive any of its rights under the Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.