

**PROPOSITION 84
AGRICULTURAL WATER QUALITY PROGRAM
LANDOWNER GRANT AGREEMENT**

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**PROPOSITION 84
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The Proposition 84 Agricultural Water Quality Program ("PROGRAM") is being administered by the COALITION FOR URBAN/RURAL ENVIRONMENTAL STEWARDSHIP, a California Nonprofit Public Benefit Corporation ("CURES") under contract with the STATE WATER RESOURCES CONTROL BOARD ("SWRCB"). The SWRCB, acting under authority of Proposition 84, *THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006*, and specifically, California Water Code § 75029.5 has appropriated and encumbered \$8,027,158.00 for the purpose of providing technical assistance and management evaluations, assessments, infrastructure, and plans to individual grant recipients that will allow those individuals to implement management practices to address water quality exceedances identified in the Central Valley and reduce the discharge of pollutants from agricultural operations into surface waters of the State.

This Landowner Grant Agreement ("AGREEMENT") is made and entered into **effective** _____, **2011**, by and between CURES, and the persons and/or entities listed in the **Grant Award Notice**, attached to this AGREEMENT as **Exhibit A** and incorporated herein by reference to this AGREEMENT, as recipient of the grant funds ("RECIPIENT"), further subject to the submission and selection of RECIPIENT as an Individual Project Recipient chosen by the Advisory Selection Committee ("ASC") in accordance with the "Proposition 84 Agricultural Water Quality Grant Program Grant Agreement Between The State Water Resources Control Board and Coalition for Urban/Rural Environmental Stewardship, Inc." ("GRANT AGREEMENT"), attached to this AGREEMENT as **Exhibit B** and incorporated herein by reference.

SECTION 1. RECITALS.

This AGREEMENT is made with reference to the following facts:

- a. CURES is a California nonprofit public benefit corporation in good standing, with its principal executive office located at 531-D North Alta Avenue, in Dinuba, Tulare County, California 93618. CURES is the designated contractor for administration of the PROGRAM in conjunction with the SWRCB. In conjunction with the administration of this PROGRAM, an Advisory Selection Committee ("ASC") has been established to develop, review, and finalize Individual Project Selection Criteria, serve as the selection committee for individual projects, and to assist in the oversight of individual water quality improvement projects (referred to individually as "PROJECT").
- b. RECIPIENT is the individual or legal entity, who will be receiving grant funds ("AWARD") from CURES as long as the provisions of this AGREEMENT have been fully complied with. RECIPIENT is more particularly described in the **Grant Award Notice**, attached hereto and incorporated herein as **Exhibit A** to this AGREEMENT.
- c. PROJECT is the individual water quality improvement project selected by the ASC to meet the requirements for the disbursement of funds in accordance with

the GRANT AGREEMENT and more fully described in Exhibit C, the Application, attached to this AGREEMENT and incorporated herein by reference.

- d. CURES desires to contract with RECIPIENT, and RECIPIENT desires to contract with CURES, in order for CURES to provide RECIPIENT with an AWARD to manage and implement the PROJECT, as described in Exhibit C, all according to the terms and subject to the conditions of this AGREEMENT.
- e. Funding for this PROJECT will be provided in part through the GRANT AGREEMENT with the SWRCB. In order for the RECIPIENT to qualify for disbursement of Proposition 84 funds administered by CURES it must comply with all of the terms of the GRANT AGREEMENT specifically applicable to grant recipients as well as this AGREEMENT. Additionally, RECIPIENT will also be required to provide a (25%) match of grant funds disbursed to RECIPIENT.
- f. This AGREEMENT is made in consideration of all the mutual agreements, conditions, covenants, promises, representations, undertakings, and warranties set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged.

SECTION 2. AWARD OF CONTRACT.

- a. The AWARD amount is listed in Section C of **Exhibit A** and incorporated herein by reference.
- b. This AGREEMENT consists of this AGREEMENT and all attachments and exhibits which are hereby incorporated by reference.
- c. RECIPIENT shall date and sign this AGREEMENT and return the dated and signed AGREEMENT to CURES's office by no later than _____.
- d. Failure to meet this requirement may result in the forfeiture of this AWARD. When all required signatures are obtained, a fully executed copy will be returned to RECIPIENT.
- e. This AGREEMENT is not effective until it is dated and signed by all parties.

SECTION 3. AGREEMENT TO MANAGE AND IMPLEMENT PROJECT.

RECIPIENT agrees to and shall manage and implement the PROJECT according to the terms and subject to the conditions of this AGREEMENT and the GRANT AGREEMENT. In conjunction therewith, RECIPIENT agrees to and shall do the following:

- a. Secure and manage funding (in addition to the AWARD) for completion of the PROJECT. RECIPIENT shall be solely responsible for all funding for the PROJECT not paid for by the AWARD. RECIPIENT shall indemnify, defend, and hold CURES and the BOARD harmless from and against any claim for cost or expense with regard to construction of the PROJECT in accordance with the terms of this AGREEMENT.

- b.** Use the AWARD funds only for the PROJECT, in strict compliance with any and all terms and conditions of this AGREEMENT, and in accordance with the PROGRAM. To that end, RECIPIENT certifies that this PROJECT is intended to do one of the following: construction of agricultural drainage improvements; reduce pollutants in agricultural drainage water through reuse, integrated management, or treatment; or install improved irrigation technology.
- c.** Provide complete and timely information to CURES as requested from time-to-time by CURES. RECIPIENT shall respond in writing to CURES requests for information within 15 days of receipt of such written request from CURES.
- d.** Develop a design plan and map for the PROJECT including GPS coordinates and provide the same to CURES for submission to the Grant Manager for review and approval before work begins on the PROJECT. Design plans and specifications shall also be submitted to all permitting agencies for review and approval. The design plans and specifications must provide a clear description of what will be constructed at the location.
- e.** Provide CURES with a clear description of what best management practices are proposed to be implemented by RECIPIENT, describing what is different, what the expected outcomes will be, and why the particular practices were selected. In conjunction therewith, develop a list of best management practices to provide to CURES for submission to the Grant Manager. Also, provide information identifying the expected water quality changes due to the implementation of the PROJECT.
- f.** RECIPIENT shall obtain all permits and licenses necessary to accomplish the work contemplated in this AGREEMENT, pay all charges and fees, and cause all notices necessary and incidental to the due and lawful prosecution of the work to be given. RECIPIENT agrees to submit signed copies of all permits to CURES for submission to the Grant Manager before work on the PROJECT begins. Activities supported by Proposition 84 grant funds are projects under the California Environmental Quality Act ("CEQA") and must comply with CEQA requirements. Work on the PROJECT cannot begin until the SWRCB has reviewed the CEQA documents and given environmental clearance. The RECIPIENT therefore shall submit all CEQA documentation to CURES, who will submit the documentation to the SWRCB. RECIPIENT agrees that it will not begin work on the PROJECT until it has received environmental clearance through CURES from the SWRCB. If the PROJECT is located on federal land, RECIPIENT agrees that it will comply with the National Environmental Policy Act ("NEPA") prior to beginning the PROJECT. If the PROJECT assists in meeting any of the CALFED Bay-Delta Program Goals, the PROJECT shall be consistent with the CALFED Programmatic Record of Decision and must be implemented, to the maximum extent possible, through local and regional programs. Prior to reimbursement or payment of any AWARD monies, RECIPIENT agrees that it will certify that all necessary and applicable permits and environmental documents, including but not limited to the permits required under this AGREEMENT and the GRANT AGREEMENT, have been prepared and all clearances have been obtained from the appropriate agencies.
- g.** RECIPIENT shall not proceed with any work on the PROJECT until authorized in writing by the SWRCB and CURES.

h. Manage construction of the PROJECT according to schedule, design, and specifications. It is understood that the target date for completing construction and implementation of the PROJECT is _____.

i. Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this AGREEMENT:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

Install and maintain signage which shall be posted in a prominent location at the PROJECT site and shall include the SWRCB logo noted below and the following disclosure statement:



“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board.”

j. Handle operation, maintenance, and responsibility for all components of the PROJECT according to the system specifications and operational parameters.

k. Provide GPS information for the PROJECT site identified in Exhibit C. Provide photographic documentation of the project both before it is begun and after it is completed.

l. RECIPIENT and its contractors, subcontractors, agents, and assigns will comply with all applicable laws, polices and regulations.

m. Handle all contractual and administrative issues arising out of or related to any subcontracts it enters into under this AGREEMENT.

n. Maintain at all times appropriate systems and controls in place to ensure that state funds shall not be used in the performance of this AGREEMENT for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

o. For the useful life of the Project, the RECIPIENT shall install and continually operate the PROJECT components; shall cause the PROJECT components to be operated in an efficient and economical manner; shall provide all repairs, renewals, and replacements necessary to the efficient operation of the PROJECT components; and shall maintain the PROJECT components in as good and efficient a condition as existed upon its construction. The RECIPIENT shall maintain and operate the facilities and structures constructed or improved as part of the PROJECT throughout

the life of the PROJECT, consistent with the purposes for which the AWARD was made. The RECIPIENT shall assume all operation and maintenance costs of the facilities and structures created pursuant to the PROJECT. CURES and the SWRCB shall not be liable for any cost of maintenance, management, or operation of the PROJECT. For purposes of this Grant Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "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 or reconstruct capital assets or basic structures. Refusal of the RECIPIENT to ensure operation and maintenance of the PROJECT or any PROJECT component in accordance with this provision may, at the option of CURES or the SWRCB, be considered a breach of this AGREEMENT and may be treated as a default. RECIPIENT hereby acknowledges and agrees that the useful life of the PROJECT shall be either that specified in the National Resources Conservation Services ("NRCS") conservation practice service life Program Manual, Part 515.141 of the 10/24/04 version published by NRCS, OR 20 years, whichever is shorter. RECIPIENT agrees that it will not abandon, substantially discontinue the use of, lease, or dispose of an implemented PROJECT without the prior written approval of both CURES and the SWRCB. The RECIPIENT may be excused from operations and maintenance only upon the prior written approval of the Grant Manager. If RECIPIENT fails to comply with this term it specifically acknowledges and agrees that it will be required to repay to CURES all of the grant funds disbursed to it pursuant to the terms of this AGREEMENT.

p. Allow access to CURES, the ASC, the SWRCB, Bureau of State Audits, the Central Valley Regional Water Quality Control Board ("CVRWQCB") and their respective staff or representatives to the location where the PROJECT is situated for inspection and evaluation purposes without prior notice during the life of the Project.

q. Provide evidence of insurance and indemnification of CURES and SWRCB, in the form and in amounts required by CURES and/or the SWRCB, and as required by this AGREEMENT.

r. At the completion of the PROJECT provide a signed certificate that the terms of this individual PROJECT AGREEMENT have been fully complied with and fulfilled.

s. Cooperate as reasonably required by CURES in implementing any educational or outreach program implemented by CURES or the SWRCB, including conducting tours and allowing photographs of the PROJECT.

RECIPIENT further agrees that all invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this AGREEMENT shall only be for the tasks set forth in Attachment C. The RECIPIENT shall not submit any invoice containing costs that are ineligible for reimbursement or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., matching costs). Any eligible costs for which the RECIPIENT is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or

termination of this AGREEMENT requiring the repayment of all funds disbursed hereunder to CURES who shall reimburse the SWRCB. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to the terms of this AGREEMENT and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

SECTION 4. STANDARDS OF PERFORMANCE.

- a.** RECIPIENT, its contractors, subcontractors, and their employees, agents, and assigns in the performance of RECIPIENT's work under this AGREEMENT shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. All work shall be completed in a first class and professional manner using new materials.
- b.** During the performance of this AGREEMENT, RECIPIENT and its consultants, contractors, and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The RECIPIENT, and its consultants, contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- c.** The RECIPIENT, its consultants, contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- d.** The RECIPIENT, its consultants, contractors, and subcontractors shall give written notice of their relevant obligations under this AGREEMENT to labor organizations with which they have a collective bargaining or other agreement, if any.
- e.** The RECIPIENT shall include the nondiscrimination and compliance provisions of this AGREEMENT in all subcontracts to perform work under the AGREEMENT. Failure by the RECIPIENT to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this AGREEMENT which may result in its termination.
- f.** Any contractors, outside associates, or consultants required by RECIPIENT in connection with the services covered by this AGREEMENT shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this AGREEMENT, or as are specifically authorized by the SWRCB's Grant

Manager and CURES during the performance of this AGREEMENT. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the SWRCB's Grant Manager and CURES.

g. RECIPIENT shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". RECIPIENT shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477) www.epls.gov. RECIPIENT certifies to the best of its knowledge and belief, that it and its principals, as well as its subcontractors, associates and consultants:

- (1)** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or grantee;
- (2)** Have not within a three-year period preceding this AGREEMENT been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3)** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (2) of this paragraph; and
- (4)** Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

h. If applicable, RECIPIENT agrees to be bound by all the provisions of the California Labor Code regarding prevailing wages. If applicable, RECIPIENT shall monitor all agreements subject to reimbursement from this AGREEMENT to assure that the prevailing wage provisions of California Labor Code are being met. RECIPIENT certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code, section 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

i. RECIPIENT agrees that only licensed professionals will be used to perform services under this AGREEMENT where such services are called for.

j. Any costs for failure to meet the foregoing standards or to correct otherwise defective work that requires the performance of the work to be redone, as directed by CURES, shall be borne in total by RECIPIENT. The failure of a PROJECT to achieve the performance goals and objectives stated in the plans for the PROJECT is not a basis for requesting performance to be redone unless the work conducted by RECIPIENT and/or its subcontractors is deemed by CURES to have failed the foregoing standard of performance.

k. In the event RECIPIENT/subcontractor fails to perform in accordance with the above standard:

- (1)** RECIPIENT/subcontractor will redo, at its own expense, any task which was not performed to the reasonable satisfaction of CURES. Any work redone pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. RECIPIENT/subcontractor shall work any overtime required to meet the deadline for the task at no cost to CURES;
- (2)** CURES shall provide a new schedule for the performance to be redone of any task pursuant to this paragraph in the event that redoing of the performance of a task within the original time limitations is not feasible; and
- (3)** CURES shall have the option to direct RECIPIENT/subcontractor not to redo any task which was not performed to the reasonable satisfaction of CURES pursuant to application of (1) and (2) above. In the event that CURES directs RECIPIENT/subcontractor not to redo a task, CURES and RECIPIENT shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of CURES's right to reimbursement.

l. Nothing contained in this section is intended to limit any of the rights or remedies which CURES may have under law.

SECTION 5. PROJECT FUNDING.

PROJECT funding will be processed as described below, in accordance with the Invoicing, Budget Detail, and Reporting Provisions of the PROGRAM, as follows:

a. RECIPIENT is not eligible to receive funding of the AWARD until implementation of the PROJECT is completed and RECIPIENT has submitted invoices to CURES, in the form and including all information and/or documentation, required by CURES in order to comply with the requirements of the SWRCB and the Grant Manager. RECIPIENT hereby acknowledges and agrees that no Proposition 84 grant funds shall be disbursed to RECIPIENT until AFTER the PROJECT is completed, all requirements of this AGREEMENT have been fully met, and the specific grant funds for the PROJECT have been disbursed to CURES. In the event that Proposition 84 grant funds are not disbursed to CURES for repayment of RECIPIENT'S PROJECT costs for any reason whatsoever, CURES shall have no liability or responsibility to reimburse RECIPIENT for PROJECT costs.

b. If the Budget Act of the current year and/or any subsequent years covered under the GRANT AGREEMENT does not appropriate sufficient funds for the PROGRAM, this AGREEMENT shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the SWRCB to make any payments to CURES for the PROJECT under the GRANT AGREEMENT, and to CURES obligation to may any payments to RECIPIENT under this AGREEMENT. In this event, the State shall have no liability to pay any funds whatsoever to CURES or to furnish any other considerations under the GRANT AGREEMENT and CURES shall not be obligated to perform any provisions of the GRANT AGREEMENT or

this AGREEMENT. Nothing in this AGREEMENT shall be construed to provide the RECIPIENT with a right of priority for payment over any other RECIPIENT. If the GRANT AGREEMENT'S funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, CURES shall have the option to cancel this AGREEMENT with no liability occurring to CURES, the State, or the SWRCB, or offer an AGREEMENT amendment to the RECIPIENT to reflect the reduced amount.

c. Upon completion of the PROJECT, RECIPIENT shall submit its invoice to CURES in the format provided by CURES. Such invoice shall designate the contracted construction services as for: design plans/engineering services, earth moving, concrete work, trenching/pipeline, and/or welding/fabrication. Such invoice shall include any and all necessary and appropriate supporting documentation, including, but not limited written contracts, invoices, billings, and receipts for services performed on the PROJECT. All costs included in such invoice shall have been paid by or due and payable by RECIPIENT. Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice approved by the SWRCB after completion of the PROJECT to the reasonable satisfaction of SWRCB and CURES and after grant funds have been disbursed to CURES for the PROJECT.

d. The invoice shall also contain the following information: The date of the invoice; the time period covered by the invoice, i.e., the term "from" and "to"; the total amount due; professional and consulting services shall include the calculation formula (hours x rate = total); include original receipts as attachments; and original signature signed under penalty of perjury and date (in ink) of RECIPIENT or its authorized representative. Final invoices shall be clearly marked 'FINAL INVOICE' and submitted **NO LATER THAN** _____.

e. RECIPIENT agrees to cooperate and shall comply with the requirements of the Grant Manager of the SWRCB in order to correct any invoices that are disputed by the Grant Manager.

f. Prior to reimbursement or payment of any AWARD monies, RECIPIENT must certify that all necessary and applicable permits and environmental documents, including but not limited to the permits required under this AGREEMENT, are prepared and clearances are obtained from the appropriate agencies.

g. Upon receipt of AWARD funding, RECIPIENT shall pay all contractors, subcontractors, and vendors within thirty (30) days from receipt of the funds. In the event that RECIPIENT fails to disburse grant funds to its contractors or vendors within thirty (30) days from receipt of the funds, RECIPIENT shall immediately return such funds to CURES for return to the SWRCB. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the SWRCB. If RECIPIENT held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the SWRCB.

h. Notwithstanding any other provision of this AGREEMENT, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the

Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.

i. The SWRCB or CURES may withhold all or any portion of the AWARD provided for by this AGREEMENT in the event that RECIPIENT has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this AGREEMENT; or if RECIPIENT fails to maintain reasonable progress toward completion of the PROJECT.

j. This AGREEMENT may be terminated by written notice at any time at the option of CURES should it determine on its own or receive notice from the SWRCB that the RECIPIENT has violated any material provision of this AGREEMENT or the GRANT AGREEMENT, after such violation has been identified in writing to the RECIPIENT and after failure of the RECIPIENT to bring itself into immediate compliance with the provisions of this AGREEMENT. In the event of termination, the RECIPIENT agrees, upon demand, to immediately repay to CURES an amount equal to the total amount of grant funds disbursed to the RECIPIENT prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to/from the RECIPIENT to the date of full repayment by the RECIPIENT.

k. Funds from the AWARD shall not be used for any supplement projects required by any Regional Boards.

l. Under no circumstances may RECIPIENT use funds from any AWARD under this AGREEMENT to pay costs associated with any litigation RECIPIENT pursues against CURES, the SWRCB, the State, or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this AGREEMENT, RECIPIENT agrees to and shall complete the PROJECT funded by this AGREEMENT or to repay all of the grant funds plus interest.

m. RECIPIENT understands that if RECIPIENT has received any other state grants for the PROJECT, RECIPIENT is not eligible to receive an AWARD for the PROJECT under this Agreement. If RECIPIENT has received an AWARD for a PROJECT already funded by any other state grant, RECIPIENT is required to notify CURES immediately for direction regarding the procedure to return the AWARD.

n. RECIPIENT understands and agrees that it will provide a 25% match of grant funds allocated to it for an approved PROJECT in order to fund the costs of the PROJECT.

SECTION 6.COMPLIANCE WITH LAWS.

RECIPIENT agrees to and shall comply with, and shall require its contractors and subcontractors to comply with, any and all applicable federal, state, and local laws, rules, guidelines, regulations, and requirements with regard to the PROJECT, the AWARD, and/or this AGREEMENT, including but not limited to the following:

a. RECIPIENT agrees that, to the extent applicable, RECIPIENT will comply with the provisions of the adopted environmental mitigation plan for the term of this AGREEMENT.

b. No work under this PROJECT that is subject to CEQA or NEPA may proceed under this AGREEMENT until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the SWRCB has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Chief Director of the SWRCB's Division of Financial Assistance (Division). Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required.

c. If the PROJECT includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. RECIPIENT must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the PROJECT, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the PROJECT.

d. RECIPIENT certifies that any watershed protection activity undertaken as part of this will be consistent with the applicable adopted local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist.

e. RECIPIENT agrees to and shall at all times during the term of this AGREEMENT be in compliance with any and all applicable state and/or federal conflict of interest laws.

f. RECIPIENT certifies that this PROJECT complies with the Urban Water Management Planning Act (California Water Code § 10610 et seq.). This shall constitute a condition precedent to this AGREEMENT.

g. Any federal, state, and local laws and regulations applicable to the PROJECT not expressly listed in this AGREEMENT are incorporated herein as part of this AGREEMENT.

SECTION 7. AUDITS AND RECORDS.

a. Upon written request from CURES, RECIPIENT shall provide detailed documentation of all expenses, allow CURES or its agents access to facilities and records relating to this PROJECT, and allow CURES or its agents to collect data needed to measure and verify PROJECT completion in compliance with this AGREEMENT (this may include but is not limited to monitoring data, facility equipment surveys, site testing, and information on operational practices). In addition, RECIPIENT must agree to allow CURES or the SWRCB, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the PROJECT.

b. RECIPIENT agrees that CURES, the SWRCB, the Governor of the State, Internal Revenue Service, and the Bureau of State Audits, or their designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this AGREEMENT.

RECIPIENT agrees to and shall maintain such records for a possible audit for a minimum of thirty-five (35) years after final payment, unless a longer period of records retention is stipulated. RECIPIENT agrees to and shall allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

c. RECIPIENT shall retain all PROJECT records (including permits, financial records, progress reports, payment requests, and documentation substantiating the annual hours of operation) for a minimum of thirty-five (35) years after the PROJECT has been formally concluded, or final payment received, whichever is later, unless otherwise specified in this AGREEMENT.

d. RECIPIENT agrees that it will return any audit disallowance to CURES, who will return them to the SWRCB.

e. Without limitation of the requirement to maintain PROJECT accounts in accordance with generally accepted accounting principles, RECIPIENT agrees to and shall:

- (1)** Establish a separate file for the PROJECT which shall adequately document all significant actions relative to the PROJECT;
- (2)** Establish an accounting system which will adequately depict final total costs of the PROJECT, including both direct and indirect costs;
- (3)** Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations.

f. CURES shall be granted a royalty-free nonexclusive, irrevocable, nontransferable license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this AGREEMENT by RECIPIENT and its contractors, subcontractors, agents, or employees.

g. RECIPIENT agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this AGREEMENT shall be in the public domain. RECIPIENT may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this AGREEMENT, subject to appropriate acknowledgement of credit to the SWRCB for financial support. RECIPIENT shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

h. Throughout the life of the PROJECT and the term of this AGREEMENT, and subject to the rights of RECIPIENT, CURES and the SWRCB shall have the right to inspect the PROJECT area to ascertain compliance with this AGREEMENT without prior notice. RECIPIENT acknowledges that the PROJECT records and location are public records.

i. The parties agree that review or approval of PROJECT applications, documents, permits, plans and specifications or other PROJECT information by the CURES or

the SWRCB is for administrative purposes only and does not relieve RECIPIENT of its responsibility to ensure that the planning, design, construction, operation, maintenance, and implementation of the PROJECT complies with the requirements of this AGREEMENT.

SECTION 8. AMENDMENT TO THE PROJECT PLAN OR DESIGN.

Changes to the PROJECT plan or design may only be made under certain conditions. Such changes must not alter the original scope or purpose of the PROJECT as proposed in RECIPIENT's Application. Such changes must not appreciably affect the value of the PROJECT. PROJECT plan or design changes require advance written approval of CURES and the SWRCB. All requests must be submitted directly to CURES in writing and include a description of the proposed change, revised attachment(s), and the reasons for the change. If the change is approved, the affected sections of the AGREEMENT will be amended and signed by CURES, and RECIPIENT's authorized representative.

SECTION 9. TERM AND TERMINATION OF AGREEMENT.

a. This AGREEMENT is effective as of the date listed in the first paragraph of this AGREEMENT, and will continue in effect for a period of _____ years, thereafter. During the term of this AGREEMENT, RECIPIENT shall at all times operate and maintain the PROJECT, including, but not limited to, providing insurance coverage for the PROJECT, permitting CURES or the SWRCB access to the PROJECT for monitoring, inspection, exhibiting the PROJECT for outreach, responding to audits of the PROJECT or the PROGRAM, and complying with the provisions of the adopted environmental mitigation plan, throughout the _____ year term.

b. RECIPIENT agrees that the useful life of any practice implemented as part of the PROJECT is the applicable NRCS conservation practice service life, as specified in Part 515.141 of the October 24, 2004 version of the Program Manual (Part 515.141) published by NRCS, or 20 years, whichever is shorter. If a practice is not listed in Part 515.141, the useful life of that practice shall be twenty (20) years. RECIPIENT agrees that RECIPIENT shall at all times during the term of this AGREEMENT maintain each practice's functionality beyond its useful life.

c. RECIPIENT agrees that, except as provided in this AGREEMENT, it will not abandon, substantially discontinue use of, lease, or dispose of the PROJECT or any significant part or portion thereof during the useful life of the PROJECT without prior written approval of the SWRCB. Such approval may be conditioned as determined to be appropriate by the SWRCB, including a condition requiring repayment of all or any portion of the AWARD covered by this AGREEMENT together with accrued interest and any penalty assessments which may be due.

d. This AGREEMENT may be terminated by CURES by written notice at any time prior to completion of the PROJECT, upon violation by RECIPIENT of any material provision after such violation has been called to the attention of RECIPIENT and

after failure of RECIPIENT to bring itself into compliance with the provisions of this AGREEMENT within a reasonable time as established by CURES.

e. RECIPIENT is required to take timely actions which, taken collectively, move this PROJECT to completion. CURES will periodically evaluate the schedule for completion of PROJECT plan tasks. If CURES determines that: (1) RECIPIENT is not being diligent in completing the tasks in the plan for the PROJECT; or (2) the time remaining in the funding AWARD is insufficient to complete all PROJECT work tasks not later than the AGREEMENT term date, CURES may terminate this AGREEMENT with no responsibility for reimbursement for any PROJECT cost or any liability whatsoever.

f. This AGREEMENT shall terminate automatically on the occurrence of any of the following events:

- (1) Bankruptcy or insolvency of RECIPIENT;
- (2) Death or permanent physical or mental disability of RECIPIENT who is a natural person;
- (3) Either party may terminate this AGREEMENT, without cause, on thirty (30) days' prior written notice to the other party
- (4) This AGREEMENT may also be terminated pursuant to any other section of this AGREEMENT which specifically authorizes termination of this AGREEMENT.

Upon any termination of this AGREEMENT, RECIPIENT agrees to and shall, upon demand, immediately repay to CURES an amount equal to the amount of AWARD funds disbursed to RECIPIENT prior to such termination. CURES shall repayment this amount to SWRCB. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to RECIPIENT to the date of full repayment by RECIPIENT.

g. In the event CURES becomes insolvent or dissolved, then the SWRCB will become the sole Administrator of the PROGRAM.

SECTION 10. STATUS; RESPONSIBILITY OF RECIPIENT

a. Independent Contractor Status

It is the express intention of the parties that RECIPIENT is and at all times shall be an independent contractor and not an employee, agent, joint venturer, or partner of CURES or the SWRCB. Nothing in this AGREEMENT shall be interpreted or construed as creating or establishing the relationship of employer and employee between RECIPIENT, on one hand, and CURES or the SWRCB, on the other hand. RECIPIENT, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of CURES or the SWRCB.

b. Recipient's Employees, Agents and Subcontractors

- 1) RECIPIENT shall furnish at RECIPIENT'S own discretion, selection and expense, the workers (RECIPIENT'S employees, agents or subcontractors), which are necessary to fulfill this AGREEMENT.
- 2) RECIPIENT shall be solely responsible for the direction and control of its employees, agents and subcontractors performing services under this AGREEMENT, including their selection, hiring, firing, supervision, assignment, and direction, the setting of wages, hours and working conditions, and the adjustment of their grievances. RECIPIENT shall determine the method, means and manner of the performance of the work of its employees, agents and subcontractors based on the obligations required by this AGREEMENT.
- 3) RECIPIENT shall be solely responsible for the negligent or intentional acts or omissions of its employees, agents and subcontractors who are retained incident to providing services pursuant to this AGREEMENT.
- 4) RECIPIENT assumes full and sole responsibility for the payment of all fees, wages, benefits and expenses of its employees, agents, and subcontractors, and for all state and federal income tax withholding, unemployment insurance, workers compensation insurance, and social security or other taxes as to all persons employed or retained by RECIPIENT in the performance of services under this AGREEMENT. CURES and the SWRCB shall not be responsible for the wages, benefits or expenses due RECIPIENT's employees, agents or subcontractors nor for income tax withholding, social security, unemployment, or other payroll taxes, or for workers compensation insurance for RECIPIENT's employees, agents or subcontractors.
- 5) The parties acknowledge, intend and agree that neither RECIPIENT, nor any of RECIPIENT's employees, agents or subcontractors, shall be considered a "leased employee" of CURES or SWRCB within the meaning of Section 414(n) of the Internal Revenue Code of 1986, as amended, nor shall any such individual be eligible or entitled to participate in any benefit plan sponsored by CURES or SWRCB.

SECTION 11. EQUIPMENT.

Title to equipment acquired by RECIPIENT with AWARD funds shall vest in RECIPIENT. RECIPIENT shall use the equipment in the PROJECT for which it was acquired as long as needed, whether or not the PROJECT continues to be supported by AWARD and shall not encumber the property without CURES's approval.

SECTION 12. INDEMNIFICATION, DEFENSE, AND HOLD HARMLESS.

a. The Parties agree that review or approval of PROJECT applications, documents, permits, plans and specifications or other PROJECT information by CURES or the SWRCB is for administrative purposes only and does not relieve the RECIPIENT of its responsibility to properly plan, design, construct, operate, maintain, implement,

or otherwise carry out the PROJECT. To the extent permitted by law, the RECIPIENT agrees to indemnify, defend and hold harmless CURES, the SWRCB, and the State against any loss, liability, claim, damage, or expense actually and reasonably incurred from any legal claim or action brought against CURES, the State, or the SWRCB, arising out of or related to (1) the PROJECT or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the PROJECT or any part thereof; (2) the acts or omissions of RECIPIENT or its agents, employees, or assigns, in the performance of any of the PROJECT activities contemplated by this AGREEMENT or any related document; (3) any violation of any applicable law, rule or regulation, including any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code, section 13304, and any successors to said laws, rule or regulation or the release of any toxic substance) by the RECIPIENT or its employees, agents, or assigns on or from the PROJECT that is the subject of this AGREEMENT; or, (4) any untrue statement of any material fact or omission to state a material fact by the RECIPIENT necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the RECIPIENT for use in any disclosure document utilized in connection with any of the transactions contemplated by this AGREEMENT. To the fullest extent permitted by law, the RECIPIENT agrees to pay and discharge any judgment or award entered or made against CURES, the SWRCB, and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. This provision shall be included in any contract(s) between RECIPIENTS and those performing work on RECIPIENT'S behalf on the PROJECT and shall require the RECIPIENT'S contractors and subcontractors to provide the same level of indemnity to CURES, the SWRCB and the State. The provisions of this section shall survive the term of this AGREEMENT.

b. In the event that any breach of any of the provisions of this AGREEMENT by RECIPIENT shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State of California to reimburse the federal government by reason of any arbitrage profits, RECIPIENT shall immediately reimburse the State of California in an amount equal to any damages paid by or loss incurred by the State due to such breach.

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SECTION 13. BONDING AND INSURANCE.

a. Bonding.

Where contractors are used, RECIPIENT shall not begin construction until each such contractor has furnished a performance bond in favor of CURES in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

b. Insurance.

- (1)** Throughout the life of the PROJECT, RECIPIENT shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this AGREEMENT, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days' prior written notice to CURES and the SWRCB. In the event of any damage to or destruction of the PROJECT or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair, or replacement of the damaged or destroyed parts of the PROJECT or its larger system. RECIPIENT shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair, or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
- (2)** At all times during the term of this AGREEMENT and any extension thereof, RECIPIENT shall maintain in full force and effect, at RECIPIENT's sole expense, and with insurance companies admitted in California and satisfactory to CURES, one or more primary policies of public liability insurance covering bodily injury, property damage, and products liability, with a "per occurrence" or combined single limit of not less than \$1,000,000.00. Each such insurance policy shall name CURES (Coalition for Urban/Rural Environmental Stewardship) **and** the State of California as additional insureds, and shall provide that the policy may not be terminated nor may coverage be reduced except upon the expiration of thirty (30) days written notice to CURES and to the SWRCB. CURES may require RECIPIENT to increase the foregoing policy limit if CURES deems such increase desirable to protect CURES.
- (3)** In the event RECIPIENT fails at any time during the term of this AGREEMENT to obtain insurance as required by this section, or to provide evidence thereof, CURES shall have the right but not the duty to procure such insurance, and RECIPIENT shall immediately pay to CURES the costs and expenses thereof.

(4) With regard to claims arising from the RECIPIENT's performance of the work described in this contract, the RECIPIENT's insurance coverage shall be primary insurance with respect to CURES, its officers, directors, employees and volunteers. Any insurance or self-insurance maintained by CURES, its officers, directors, employees or volunteers shall apply in excess of, and not contribute with, the RECIPIENT's insurance.

(5) RECIPIENT shall furnish CURES with certificates of insurance evidencing the coverages required by this provision. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by CURES before work commences. CURES reserves the right to require complete, certified copies of all required insurance policies, at any time.

(6) CURES, its agents, and employees make no representation that the limits of liability specified to be carried by RECIPIENT pursuant to this AGREEMENT are adequate to protect RECIPIENT. If RECIPIENT believes that any of such insurance coverage is inadequate, RECIPIENT will obtain such additional insurance coverage as RECIPIENT deems adequate, at RECIPIENT's sole expense.

SECTION 14. CHANGE IN BUSINESS.

a. RECIPIENT shall promptly notify CURES of the occurrence of each of the following:

- (1) A change of address;
- (2) A change in the business name or ownership;
- (3) The existence of any litigation or other legal proceeding affecting the PROJECT;
- (4) The occurrence of any casualty or other loss to PROJECT personnel, equipment or third parties of a type commonly covered by insurance; and/or
- (5) Receipt of notice of any claim or potential claim against RECIPIENT for patent, copyright, trademark, service mark and/or trade secret infringement that could affect CURES's rights.

b. RECIPIENT shall not change or reorganize the type of business entity under which it does business except upon prior written notification to CURES. A change of business entity or name change requires an amendment assigning or novating the AGREEMENT to the changed entity. In the event that CURES is not satisfied that the new entity can perform as the original RECIPIENT, CURES may terminate this AGREEMENT as provided in the termination paragraph.

c. Neither this AGREEMENT nor any duties or obligations hereunder may be in any way assigned or delegated by RECIPIENT in whole or in part without the prior written consent of CURES, which CURES may withhold in its sole discretion.

- d. The SWRCB is an intended third party beneficiary of this AGREEMENT. The parties do not otherwise create any rights in, or grant remedies to, any other third party as a beneficiary of this AGREEMENT, or of any duty, covenant, obligation or undertaking established herein

SECTION 15. EXHIBITS, ATTACHMENTS, AND REFERENCES.

RECIPIENT's Application, in its entirety attached hereto as **Exhibit C** is hereby expressly incorporated into this AGREEMENT. Any and all other exhibits now or later attached hereto will be deemed incorporated by this reference as if set forth in full. All cross-references in this AGREEMENT, unless specifically directed to another agreement or document, refer to terms, conditions, covenants, provisions, and restrictions in this AGREEMENT, and shall not be deemed to be references to any other agreements or documents. Any references to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations. In the event the terms of this AGREEMENT conflict with the Application, the parties hereby agree that the terms of this AGREEMENT shall prevail over the terms of the Application.

SECTION 16. NOTICES.

a. Any and all notices or other communications required or permitted by this AGREEMENT or by law to be served on or given to any party by any other party will be in writing and will be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when delivered by certified or registered mail, postage prepaid, return receipt requested, or by Federal Express or other overnight courier service to the addresses listed on **Exhibit A**. Certified mail will be deemed delivered on the date indicated on the return receipt. Notices delivered by courier service will be deemed delivered on the date indicated on the courier's delivery receipt.

b. RECIPIENT shall notify CURES and the SWRCB prior to conducting construction, monitoring, demonstration, or other implementation activities such that CURES, the SWRCB, and/or their staff may observe and document such activities.

c. RECIPIENT shall promptly notify CURES and the SWRCB of events or proposed changes that could have a material effect on the scope, budget, or work performed under this AGREEMENT. RECIPIENT agrees that no substantial change in the scope of the PROJECT will be undertaken until written notice of the proposed change has been provided to CURES and the SWRCB, and CURES and the SWRCB have given written approval for such change.

d. Should a potential archeological or historical resource be discovered during implementation of the PROJECT, the RECIPIENT agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the SWRCB or the Division has determined what actions should be taken to protect and preserve the resource. The RECIPIENT agrees to implement appropriate actions as directed by the SWRCB or the Division.

e. Should a federal or state protected endangered or threatened species, as defined in the Federal or California Endangered Species Acts, be unexpectedly

encountered during implementation of the PROJECT, the RECIPIENT agrees to promptly notify CURES, who will notify the SWRCB or the Division. This notification is in addition to the RECIPIENT'S obligations under the federal or state Endangered Species Acts.

f. RECIPIENT shall notify CURES and the SWRCB at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this AGREEMENT and provide the opportunity for attendance and participation by CURES's and /or the SWRCB's representatives.

g. RECIPIENT shall promptly notify CURES and the SWRCB in writing of completion of work on the PROJECT.

h. RECIPIENT shall promptly notify CURES and the SWRCB in writing of any cessation of all major construction work on the PROJECT where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.

i. RECIPIENT shall promptly notify CURES if circumstances occur which will delay the PROJECT so that PROJECT work tasks cannot be completed within the time frames and beyond the estimated date of completion of construction previously provided. RECIPIENT is required to notify CURES in writing within five (5) working days of the occurrence of the delay.

SECTION 17. ENTIRE AGREEMENT AND AMENDMENT.

This AGREEMENT embodies the entire agreement and understanding between the parties hereto relating to the subject matter hereof, and all prior or contemporaneous negotiations, agreements and understandings, oral or written, are hereby revoked, cancelled and rescinded and are all merged herein and superseded hereby. No amendment or variation of the terms of this AGREEMENT shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this AGREEMENT is binding on any of the parties.

SECTION 18. BINDING ON HEIRS, SUCCESSORS, AND PERMITTED ASSIGNS.

This AGREEMENT and each of its provisions shall be binding on and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

SECTION 19. SEVERABILITY.

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

SECTION 20. PERFORMANCE UNDER PROTEST.

If at any time a dispute arises as to any amount or sum of money to be paid by one or more party to one or more other parties under the provisions of this AGREEMENT, the party against whom the obligation to pay the money is asserted will have the right to make payment "under protest" and such payment will not be regarded as a voluntary payment, and there will survive the right on the part of said party to institute suit for recovery of such sums. If it is adjudged that there was no legal obligation on the part of said party to pay such sums or any part thereof, said party will be entitled to recover such sums or so much thereof as it was not legally required to pay under the provisions of this AGREEMENT.

SECTION 21. TIME IS OF THE ESSENCE.

The parties expressly agree that time is of the essence in the performance of each and every term of this AGREEMENT. The RECIPIENT agrees that it shall proceed with and complete the Project in an expeditious manner.

SECTION 22. WAIVERS.

No waiver by any party of any provision of this AGREEMENT will be deemed a waiver of any other provision hereof or of any subsequent breach by any other party of the same or any other provision. Any waiver of rights with respect to a default or other matter arising under the AGREEMENT at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any party's consent to, or approval of, any act will not be deemed to render unnecessary the obtaining of that party's consent to or approval of any subsequent act by the party seeking consent. No waiver of any breach of this AGREEMENT shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this AGREEMENT shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

SECTION 23. PLACE OF CONTRACTING, AND CHOICE OF LAW.

Subject to the arbitration provisions of this AGREEMENT, the courts of the State of California will have sole jurisdiction over any disputes or litigation. The parties also agree that this AGREEMENT was made and entered into in Sacramento County, California, and that any breach of this AGREEMENT will be deemed to have occurred in Sacramento County, California. This AGREEMENT will be governed by and construed under the laws of the State of California.

SECTION 24. MEDIATION AND ARBITRATION OF DISPUTES.

a. The parties to this AGREEMENT shall submit all disputes concerning the interpretation or enforcement of rights and duties under this AGREEMENT, whether in tort, contract, or otherwise, or any other deadlock arising between the parties that cannot be resolved, to mediation by a mediator to be mutually agreed to by the parties or appointed by a judge of the Sacramento County Superior Court if the parties cannot so agree. Should any party refuse to mediate the deadlock or dispute or should the mediator find that a party did not participate in the mediation

in good faith, that party shall waive the right to collect attorneys' fees as provided under this AGREEMENT.

b. If the dispute cannot be resolved by mediation, the dispute shall be determined by binding arbitration in Sacramento, CA, before a sole arbitrator, in accordance with the laws of the State of California for agreements made and to be performed in that State. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.

The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

c. Notwithstanding the foregoing, a party may apply to a court of competent jurisdiction for relief in the form of a temporary restraining order, preliminary injunction, specific performance, or other provisional remedy pending final determination of a claim through arbitration in accordance with this paragraph c. If proper notice of any hearing has been given, the arbitrator will have full power to proceed to take evidence or to perform any other act necessary to arbitrate the matter in the absence of any party who fails to appear.

d. By signing this AGREEMENT, the parties knowingly and voluntarily waive their right to a jury or court trial.

e. Notwithstanding the foregoing, the arbitrator may construe or interpret, but shall not ignore the terms of this AGREEMENT and shall be bound by California substantive law. The arbitration decision shall include written findings of fact and conclusions of law.

f. Notwithstanding any other provision of this AGREEMENT to the contrary, in the event that enforcement of this arbitration clause in any way diminishes or negatively affects any insurance coverage of any party to a dispute regarding this AGREEMENT, this arbitration clause shall be deemed stricken from this AGREEMENT.

SECTION 25. REMEDIES AND ATTORNEYS' FEES.

The Recipient agrees that any remedy provided for in this AGREEMENT is in addition to and not in derogation of any other legal or equitable remedy available to CURES or the SWRCB as a result of the breach of this AGREEMENT by the RECIPIENT, whether such breach occurs before or after completion of the PROJECT, and exercise of any remedy provided by this AGREEMENT by CURES or the SWRCB shall not preclude CURES or the SWRCB from pursuing any legal remedy or right which would otherwise be available. Should any action, arbitration, or proceeding be commenced to enforce the terms of this AGREEMENT or declare rights hereunder, whether in tort, contract, or otherwise, the prevailing party in any such action, arbitration, trial or appeal thereon, shall be entitled to his, her, or its reasonable attorneys' fees and litigation costs to be paid by the losing party as fixed by the court or arbitrator in the same or a separate suit, and whether or not such action is pursued to decision or judgment. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be

such as to fully reimburse all attorneys' fees reasonably incurred in good faith. The attorneys' fees award shall also include attorneys' fees incurred in enforcing or collecting any judgment, settlement, or award, as provided by Sections 685.040 and 685.070 of the California Code of Civil Procedure.

SECTION 26. ADDITIONAL REQUIREMENTS.

- a. Assurances.** CURES reserves the right to seek further written assurances from RECIPIENT that the work of the PROJECT under this AGREEMENT will be performed consistent with the terms of this AGREEMENT and the GRANT AGREEMENT.
- b. Word Usage.** Unless the context clearly requires otherwise: all references in this AGREEMENT to the plural will include the singular, and all references to the singular will include the plural; all references to gender will include the masculine, feminine, and neuter genders; the words "shall," "will," or "agrees" are mandatory, and the word "may" is permissive; and the word "or" is not exclusive, and the words "includes" and "including" are not limiting.
- c. Counterparts.** This AGREEMENT may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This AGREEMENT will not be deemed to be executed until the signature by and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original of this AGREEMENT. Any one of such completely executed counterparts will be sufficient proof of this AGREEMENT.
- d. Counting Days.** Days shall be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall be excluded. Any act required by this AGREEMENT to be performed by a certain day shall be timely performed if completed before 5:00 p.m., Pacific Time, on that date. If the day for performance of any obligation under this AGREEMENT is a Saturday, a Sunday, or a legal holiday, the time for performance of that obligation shall be extended to 5:00 p.m., Pacific Time, on the first following day that is not a Saturday, Sunday, or legal holiday.
- e. Force Majeure.** The time period specified for any act herein shall be extended for any periods of time during which any parties are prevented from commencing or proceeding with any performance required by this AGREEMENT by any act of God, riot, war, terrorist attack, civil unrest, flood, earthquake, strike, action or failure to act by any governmental authority, litigation commenced by any person or entity not a party to this AGREEMENT, failure or inability of any public utility to deliver service, or any other similar cause beyond the reasonable control of any party.
- f. Further Documents and Acts.** The parties shall at their own cost and expense, execute and deliver, or cause to be executed and delivered, any and all documents, and to perform, or cause to be performed, any and all further acts that may be reasonably necessary or appropriate to evidence or carry out the intent, provisions, and/or purposes of this AGREEMENT.

EXECUTION OF AGREEMENT.

This AGREEMENT was executed voluntarily without any duress or undue influence on the part of and on behalf of the parties. The parties acknowledge and agree that they have read and understood this AGREEMENT and its legal effect.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned has signed this AGREEMENT indicating his or her agreement and assent hereto, and also indicating the date of signing.

“CURES”
COALITION FOR URBAN RURAL ENVIRONMENTAL
STEWARDSHIP, INC.,
A California Nonprofit Public Benefit Corporation

DATED: _____ By: _____
PARRY KLASSEN, Executive Director

“RECIPIENT”

DATED: _____ Company Name: _____

Print Name: _____

Signature: _____

Title: _____