

-DRAFT TEMPLATE-
TRANSFER AGREEMENT BETWEEN
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
AND (MUNICIPALITY)
AGREEMENT NO. _____
SAFE, CLEAN WATER PROGRAM – MUNICIPAL PROGRAM

This Transfer Agreement, hereinafter referred to as "Agreement," is entered into as of _____ by and between the Los Angeles County Flood Control District, hereinafter referred to as "District," and _____ (*Municipality*), hereinafter referred to as "Municipality."

WHEREAS, District, pursuant to the Los Angeles Region Safe, Clean Water (SCW) Program ordinance (Chapter 16 of the Los Angeles County Flood Control District Code) and the SCW Program Implementation Ordinance (Chapter 18 of the Los Angeles County Flood Control District Code), administers the SCW Program for the purpose of funding Projects and Programs to increase stormwater and urban runoff capture and reduce stormwater and urban runoff pollution in the District;

WHEREAS, Municipality, pursuant to Section 16.04.A.2. of the Los Angeles County Flood Control District Code, forty percent (40%) of annual SCW Program tax revenues shall be allocated to Municipalities within the District, in the same proportion as the amount of revenues collected within each Municipality, to be expended by those cities within the cities' respective jurisdictions and by the County within the unincorporated areas that are within the boundaries of the District, for the implementation, operation and maintenance, and administration of Projects and Programs, in accordance with the criteria and procedures established in this Chapters 16 and 18 of the Los Angeles County Flood Control District Code;

WHEREAS, pursuant to Section 16.05.A.1. of the Los Angeles County Flood Control District Code, prior to their receipt of SCW Program funds, Municipalities must enter into an agreement with the District to transfer SCW Program funds.;

WHEREAS, the County of Los Angeles Board of Supervisors has approved a standard template Agreement, as required by and in accordance with Section 18.09 of the Los Angeles County Flood Control District Code, for the transfer of SCW Program funds to Municipalities.

NOW, THEREFORE, in consideration of the promises, mutual representations, covenants and agreements in this Agreement, the District and the Municipality, each binding itself, its successors and assigns, do mutually promise, covenant, and agree as follows:

I. DEFINITIONS

The definitions set forth in Sections 16.03 and 18.02 of the Los Angeles County Flood Control District Code shall apply to this Agreement. In addition, the following definitions shall also apply:

“Agreement” means this Transfer Agreement, including all exhibits and attachments hereto.

“Annual Plan” means the plan referred to in Section 18.09.B.5 of the Code that includes the contents specified in Exhibit A..

"Code" means the Los Angeles County Flood Control District Code.

“Days” means calendar days unless otherwise expressly indicated.

“Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year.

“Safe Clean Water (SCW) Program Payment” means the Municipality's annual allocation of SCW Program funds as described in Section 16.04.A.2. of the Code disbursed by the District to the Municipality .

“Year” means calendar year unless otherwise expressly indicated.

II. PARTY CONTACTS

The District and the Municipality designate the following individuals as the primary points of contact and communication regarding the Funded Activity and the administration and implementation of this Agreement.

Los Angeles County Flood Control District		Municipality:	
Name:	(Program Manager)	Name:	(Municipal Contact)
Address:		Address:	
Phone:		Phone:	
Email:		Email:	

Either party to this Agreement may change the individual identified as Municipal Contact above by providing written notice of the change to the other party.

III. EXHIBITS INCORPORATED BY REFERENCE

The following exhibits to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement:

EXHIBIT A – ANNUAL PLAN CONTENTS

EXHIBIT B – GENERAL TERMS AND CONDITIONS

EXHIBIT C- SPECIAL CONDITIONS

EXHIBIT D – NATURE-BASED SOLUTIONS (Best Management Practices)

EXHIBIT E – OPERATIONS AND MAINTENANCE GUIDANCE DOCUMENT

IV. MUNICIPAL PROGRAM IMPLEMENTATION

- A. The Municipality shall annually prepare and submit to the District, an Annual Plan. The Annual Plan for the 2020-21 Fiscal Year shall be submitted to the District no later than 45-days after the execution of this Agreement by the last party to sign. An Annual Plan for each subsequent Fiscal Year shall be submitted not later than April 1st of that Fiscal Year.
- B. The Municipality shall utilize the SCW Program Payments in compliance with Chapters 16 and 18 of the Code.
- C. The Municipality shall comply with the terms and conditions in Exhibits B, C, and D, of this Agreement, and all applicable provisions of Chapters 16 and 18 of the Code, specifically including, without limitation, Section 18.06.

V. SCW PROGRAM PAYMENTS TO MUNICIPALITIES

- A. The District shall disburse the Municipality's SCW Program Payment for the 2020-21 Fiscal Year within 45-days of receipt of the signed executed Agreement. The initial disbursement of SCW Program Payments shall include the amount of revenue collected by the District at the time of Agreement execution; any remaining funds will be disbursed by August 2020. Subsequent disbursements shall occur annually in August.
- B. For subsequent Fiscal Years, the District shall disburse the Municipality's SCW Program Payment upon satisfaction of the following conditions: (1) the District has received the Annual Report required pursuant to Section 18.06.D of the Code; (2) the District has received Municipality's Annual Plan for that Fiscal Year, and (3) the Municipality has complied with the audit requirements of Section 16.07 of the Code.
- C. Notwithstanding any other provision of this Agreement, no disbursement shall be made at any time or in any manner that is in violation of or in conflict with federal, state, County laws, policies, or regulations.
- E. All disbursements shall be subject to and be made in accordance with the terms and conditions in this Agreement and Chapters 16 and 18 of the Code.

VI. Term of Agreement

This Agreement shall expire at the end of the _____ (3-5 years for first Agreement and 3-year terms for subsequent Agreements) _____ Fiscal Year. The parties shall thereafter enter into a new agreement based on the most recent standard template agreement approved by the Board.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

*(Municipal Contact)*_____:

By: _____

Name:

Title:

Date: _____

LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT:

By: _____

Name:

Title:

Date: _____

EXHIBIT A – ANNUAL PLAN CONTENTS

- A-1. Description of all projects anticipated to be funded using the SCW Program Payment. Include a discussion of how the projects will result in the achievement of SCW Program Goals.
- A-2. Description of all programs anticipated to be funded using the SCW Program Payment. Include a discussion of how the programs will result in the achievement of SCW Program Goals.
- A-3. Description of all operation and maintenance activities anticipated to be funded using the SCW Program Payment. Include a discussion of how those activities will result in the achievement of SCW Program Goals.
- A-4. Stakeholder and community outreach/engagement activities anticipated to be funded with the SCW Program Payment.
- A-5. Description of post-construction monitoring for projects completed using the SCW Program Payment.
- A-6. Provided the status of projects that have been awarded Institute for Sustainable Infrastructure (ISI) verification.
- A-7. A programmatic budget for the SCW Program Payment.

EXHIBIT B – GENERAL TERMS AND CONDITIONS

B-1. Accounting and Deposit of Funding Disbursement

1. SCW Program Payments distributed to the Municipality shall be held in a separate interest-bearing account and shall not be combined with other funds. Interest earned from each account shall be used by the account holder only for eligible expenditures consistent with the requirements of the SCW Program.
2. The Municipality shall not be entitled to interest earned on undisbursed SCW Program Payments.
3. The Municipality shall operate in accordance with Generally Accepted Accounting Principles (GAAP).
4. The Municipality shall be strictly accountable for all funds, receipts, and disbursements.

B-2. Acknowledgement of Credit and Signage

The Municipality shall include appropriate acknowledgement of credit to the Los Angeles County Flood District's Safe, Clean Water Program for its support when promoting activities funded with SCW Program funds or using any data and/or information developed SCW Program funds. When the SCW Program Payment is used, in whole or in part, for an infrastructure Project, signage shall be posted in a prominent location at Project site(s) or at the Municipality's headquarters and shall include the Safe, Clean Water Program color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the Los Angeles County Flood Control District's Safe, Clean Water Program." At a minimum the sign shall be 2' x 3' in size. The Municipality shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this paragraph.

When the SCW Program Payment is used, in whole or in part, for a scientific study, the Municipality shall include the following statement in the study report: "Funding for this study has been provided in full or in part from the Los Angeles County Flood Control District's Safe, Clean Water Program." The Municipality shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this paragraph.

B-3. Acquisition

Acquisition of real property shall include a Covenants, Conditions and Restrictions (CC&R) for any real property and the property shall be used for meeting the purposes of the Safe, Clean Water Program and comply with Chapter 16 and 18 of the Code.

B-4. Amendment

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 or written understanding or agreement not incorporated in this Agreement is binding on any of the parties.

B-5. Assignment

The Municipality shall not assign this Agreement.

B-6. Audit and Recordkeeping

1. The Municipality shall retain for a period of seven (7) years after Activity Completion, all records necessary in accordance with Generally Accepted Accounting Principles to determine the amounts expended, and eligibility of Projects implemented using SCW Program Payments. The Municipality, upon demand by authorized representatives of the District, shall make such records available for examination and review or audit by the District or its authorized representatives. Records shall include: accounting records, written policies and procedures, contract files, original estimates, correspondence, change order files, including documentation covering negotiated settlements, invoices, and any other supporting evidence deemed necessary to substantiate charges related to SCW Program Payments and expenditures.
2. The Municipality is responsible for obtaining an independent audit to determine compliance with the terms and conditions of this Agreement and all requirements applicable to the Municipality contained in chapters 16 and 18 of the Code. Municipality shall obtain an independent audit every three (3) years. Audits shall be funded with Municipal Program funds.
3. Municipality shall file a copy of all audit reports by the sixth (6th) month from the end of each three (3) year period. Audit reports shall be posted on the District's publicly-accessible website.

Every Third Fiscal Year		
<u>SIP Fiscal Year</u>	<u>Audit Begins</u>	<u>Audit Report Due to District</u>
2020-21	7/1/2023	No later than 12/31/2023

4. At all reasonable times, the Municipality shall permit the Chief Engineer to examine the infrastructure Projects using SCW Program Payments. The Municipality shall permit the authorized District representative, including the Auditor-Controller, to examine, review, audit, and transcribe any and all audit reports, other reports, books, accounts, papers, maps, and other records that relate to the SCW Program Payments.
5. Unsupported or ineligible expenditures, as described but not limited to those in Section 16.05.A.3 of the Los Angeles County Flood Control District Code, shall be

disallowed upon audit. The Municipality will be required to repay the District for all disallowed costs.

B-7. Availability of Funds

District's obligation to disburse the SCW Program Payment is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason including, but not limited to, failure to fund allocations necessary for disbursement of the SCW Program Payment, the District shall not be obligated to make any disbursements to the Municipality under this Agreement. This provision shall be construed as a condition precedent to the obligation of the District to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Municipality with a right of priority for disbursement over any other Municipality. If any disbursements due the Municipality under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the District that such disbursement will be made to the Municipality when sufficient funds do become available, but this intention is not binding. If this Agreement's funding for any Fiscal Year is reduced or deleted by order of the Board, the District shall have the option to either cancel this Agreement with no liability occurring to the District or offer an amendment to the Municipality to reflect the reduced amount.

B-8. Choice of Law

The laws of the State of California govern this Agreement.

B-9. Claims

B-10. Any claim of the Municipality is limited to the rights, remedies, and claims procedures provided to the Municipality under this Agreement.

B-11. Compliance with SCW Program

The Municipality shall comply with and require its contractors and subcontractors to comply with all provisions of Chapters 16 and 18 of the Code.

B-12. Compliance with Law, Regulations, etc.

The Municipality shall, at all times, comply with and require its contractors and subcontractors to comply with all applicable local, state and federal laws, rules, guidelines, regulations, and requirements.

B-13. Continuous Use of Municipal Projects; Lease or Disposal of Municipal Projects

The Municipality agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of all or a significant part or portion of any Project funded in whole or in part with SCW Program Payments during the useful life of the Project without prior written approval of the District. Such approval may be conditioned as determined to be appropriate by the District, including a condition requiring

repayment of all SCW Program Payments used to fund the Project together with accrued interest and any penalty assessments that may be due, .

B-14. Disputes

Should a dispute arise between the parties, the party asserting the dispute will notify all other parties in writing of the dispute. The parties will then meet and confer within 21 calendar days of the notice in a good faith attempt to resolve the dispute.

If the matter has not been resolved through the process set forth in the preceding paragraph, any party may initiate mediation of the dispute. Mediation will be before a retired judge or mediation service mutually agreeable to the parties. All costs of the mediation, including mediator fees, will be paid one-half by the District and one-half by the Municipality. SCW Program Payments shall not be used to pay for any costs of the mediation.

The parties will attempt to resolve any dispute through the process set forth above before filing any action relating to the dispute in any court of law.

B-15. Final Inspection and Certification of Registered Professional

Upon completion of the design phase and before construction of a project, the Recipient shall provide certification by a California Registered Professional (i.e., Professional Civil Engineer, Engineering Geologist) that the design has been completed.

Upon completion of the project, the Municipality shall provide for a final inspection and certification by a California Registered Professional (i.e., Professional Civil Engineer, Engineering Geologist), that the Project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Agreement.

B-16. Municipal Project Access

The Municipality shall ensure that the District or any authorized representative, will have safe and suitable access to the site of any Project implemented by the Municipality in whole or in part with SCW Program Payments at all reasonable times.

B-17. Funding Considerations and Exclusions

1. All expenditures of SCW Program Payments by Municipality must comply with the provisions of Chapters 16 and 18 of the Los Angeles County Flood Control District Code, including but not limited to the provisions regarding eligible expenditures contained in Section 16.05.A.2 and the provision regarding ineligible expenditures contained in Section 16.05.A.3.
2. SCW Program Payments shall not be used in connection with any Project implemented as an Enhanced Compliance Action ("ECA") and/or Supplemental Environmental Project ("SEP") as defined by State Water Resources Control

Board Office of Enforcement written policies, or any other Project implemented pursuant to the settlement of an enforcement action or to offset monetary penalties imposed by the State Water Resources Control Board, a Regional Water Quality Control Board, or any other regulatory authority; provided, however, that SCW funds may be used for a Project implemented pursuant to a time schedule order ("TSO") issued by the Los Angeles Regional Water Quality Control Board if, at the time the TSO was issued, the Project was included in an approved watershed management program (including enhanced watershed management programs) developed pursuant to the MS4 Permit.

B-18. Indemnification

The Municipality will indemnify, defend and hold harmless the District the County of Los Angeles and their elected and appointed officials, agents, and employees from and against any and all liability and expense , including defense costs, legal fees, claims, actions, and causes of action for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage, arising from or in conjunction with: (1) any Project or Program paid for, in whole or in part, with SCW Program Payments or (2) any breach of this Agreement by the Municipality.

B-19. Independent Actor

The Municipality, 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 the District.

The Municipality shall not contract work with a contractor who is in a period of debarment from any agency within the State. (LACC Chapter 2.202)

B-20. Integration

This is an integrated Agreement. This Agreement is intended to be a full and complete statement of the terms of the agreement between the District and Municipality, and expressly supersedes any and all prior oral or written agreements, covenants, representations and warranties, express or implied, concerning the subject matter of this Agreement.

B-21. Lapsed Funds

1. The Municipality shall be able to carry over uncommitted SCW Program Payments for up to five (5) years from the end of the fiscal year in which those funds are transferred from the District to the Municipality.
2. If the Municipality is unable to expend the SCW Program Payment in a timely manner, then lapsed funding procedures will apply. Lapsed funds are funds that were transferred to the Municipality but were not committed to eligible expenditures by the end of the fifth (5th) fiscal year after the fiscal year in which those funds were transferred from the District.

3. Lapsed funds shall be allocated by the Watershed Area Steering Committee of the respective Watershed Area to a new Project with benefit to that Municipality or Watershed Area.
4. In the event that funds are to lapse, due to circumstances beyond the Municipality's control, then the Municipality may request an extension of up to six (6) months in which to commit the funds to eligible expenditures. Extension Requests must contain sufficient justification and be submitted to the District in writing no later than six (6) months before the funds are to lapse.
5. The decision to grant an extension is at the sole discretion of the District.
6. Funds still uncommitted to eligible expenditures after an extension is granted will be subject to lapsed funding procedures without exception.

<u>Fiscal Year*</u> <u>Awarded</u>	<u>Funds Lapse</u> <u>After</u>	<u>Extension</u> <u>Request Due</u>	<u>Commit By</u>
2019-20	6/30/2025	No later than 12/31/2024	No later than 12/31/2025

B-22. Non-Discrimination

The Municipality agrees to abide by all federal, state, and County laws, regulations, and policies regarding non-discrimination in employment and equal employment opportunity.

B-23. No Third-Party Rights

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein

B-24. Notice

1. The Municipality shall notify the District in writing within five (5) working days of the occurrence of the following:
 - a. Bankruptcy, insolvency, receivership or similar event of the Municipality; or
 - b. Actions taken pursuant to State law in anticipation of filing for bankruptcy.
2. The Municipality shall notify the District within ten (10) working days of any litigation pending or threatened against the Municipality regarding its continued existence, consideration of dissolution, or disincorporation.
3. The Municipality shall notify the District promptly of the following:
 - a. Any proposed change in the scope of the Annual Plan.

- b. Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during construction, the Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the District has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the District;
- c. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by District representatives with at least fourteen (14) days' notice to the District;

B-25. Municipality's Responsibility for Work

The Municipality shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Municipality shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The District will not mediate disputes between the Municipality and any other entity concerning responsibility for performance of work.

B-26. Reporting

The Municipality shall be subject to and comply with all applicable requirements of the District regarding reporting requirements.

1. Annual Progress/Expenditure Reports. The Municipality shall submit Annual Progress/Expenditure Reports, using a format provided by the Program Manager, within forty-five (45) days following the end of the Fiscal Year to the Program Manager. The Annual Progress/Expenditure Reports may be posted on the District's publicly accessible website. The Annual Progress/Expenditure Report shall include:
 - a. Amount of funds received;
 - b. Breakdown of how the SCW Program Payment has been expended;
 - c. Documentation that the SCW Program Payment was used for eligible expenditures in accordance with Chapters 16 and 18 of the Los Angeles County Flood Control District Code;
 - d. Description of activities that have occurred, milestones achieved, and progress made to date, during the applicable reporting period;
 - e. Work anticipated for the next reporting period;

- f. Description of the Water Quality Benefits, Water Supply Benefits, and Community Investment Benefits and a summary of how SCW Program Payments have been used to achieve SCW Program Goals for the prior year.
 - g. Additional financial or Project-related information in connection with activity funded in whole or in part using SCW Program Payments as required by the District.
 - h. Certification from a California Registered Professional (Civil Engineer or Geologist, as appropriate), that projects implemented with SCW Program Payments were conducted in accordance with Chapters 16 and 18 of the Code.
 - i. Report on annual and total (since inception of program) benefits provided by programs and projects funded by SCWP:
 - i. Annual volume of stormwater captured and treated
 - ii. Annual volume of stormwater captured and reused
 - iii. Annual volume of stormwater captured and recharged to a managed aquifer
 - iv. Annual acreage increases in nature based solutions (good, better, best)
2. Annually, the Municipality shall prepare and provide members of the public with up-to-date information on the actual and budgeted use of the SCW Program Payment.
 3. As Needed Information or Reports. The Municipality agrees to promptly provide such reports, data, and information as may be reasonably requested by the District including, but not limited to material necessary or appropriate for evaluation of the SCW Program or to fulfill any reporting requirements of the County, state or federal government.

B-27. Representations, Warranties, and Commitments

The Municipality represents, warrants, and commits as follows:

1. Authorization and Validity. The execution and delivery of this Agreement, including all incorporated documents, by the individual signing on behalf of Municipality, has been duly authorized by the governing body of Municipality, as applicable. This Agreement constitutes a valid and binding obligation of the Municipality, enforceable in accordance with its terms, except as such enforcement may be limited by law.
2. No Violations. The execution, delivery, and performance by the Municipality of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or

result in any breach or default under any contract, obligation, indenture, or other instrument to which the Municipality is a party or by which the Municipality is bound as of the date set forth on the first page hereof.

3. No Litigation. There are no pending or, to the Municipality's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which affect the Municipality's ability to complete the Annual Plan.
4. Solvency. None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of the Municipality. As of the date set forth on the first page hereof, the Municipality is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Municipality is able to pay its debts as they become due.
5. Legal Status and Eligibility. The Municipality is duly organized and existing and in good standing under the laws of the State of California. The Municipality shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority.
6. Good Standing. The Municipality must demonstrate it has not failed to comply with previous County and/or District audit disallowances within the preceding ten years.

B-28. Travel

Any reimbursement for necessary ground transportation and lodging shall be at rates not to exceed those set by the California Department of Human Resources; per diem costs will not be eligible expenses. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel amounts that are current as of the date costs are incurred by the Municipality. No travel outside the Los Angeles County Flood Control District region shall be reimbursed unless prior written authorization is obtained from the Program Manager.

B-29. Unenforceable Provision

In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

B-30. Withholding of Disbursements and Material Violations

Notwithstanding any other provision of this Agreement, the District may withhold all or any portion of the SCW Program Payment for any Fiscal Year in the event that:

1. The Municipality has violated any provision of this Agreement; or

2. The Municipality fails to maintain reasonable progress in achieving SCW Program Goals.

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EXHIBIT C – SPECIAL CONDITIONS

- C-1. The Recipient acknowledges and agrees that the Recipient is the "lead agency" regarding compliance with the California Environmental Quality Act (CEQA) in connection with the Funded Activity and shall be responsible for the preparation of all documentation, analysis and other work and any mitigation necessary to comply with CEQA in connection with the Funded Activity prior to implementation. By entering into this Agreement, the District is not approving any activity that would be considered a project under CEQA.
- C-2. In addition to its other indemnification obligations pursuant to this Agreement, the Recipient hereby agrees to indemnify, defend, and hold harmless District, the County of Los Angeles and their officers, employees, and agents from and against any and all claims and/or actions related to the Funded Activity that may be asserted by any third party or public agency alleging violations of CEQA or the State CEQA Guidelines or the NEPA.
- C-3. Notwithstanding any other provision of this Agreement, if any documentation or other analysis pursuant to CEQA discloses that the Funded Activity, or portion thereof, will have one or more significant environmental impacts that cannot be feasibly mitigated, the Recipient shall promptly notify and consult with the District. With the District's approval, the Recipient may determine to terminate or modify the implementation of all or any portion of the Funded Activity in order to avoid such environmental impacts.
- C-4. In the event the parties, pursuant to the preceding paragraph, determine to terminate the implementation of the entirety of the Funded Activity, the Recipient shall promptly return all previously disbursed but unspent SCW Program Contributions and the Recipient shall thereafter have no further obligation under this Agreement to implement the Funded Activity. In the event the parties determine to terminate the implementation of a portion of the Funded Activity, the Recipient shall promptly return all previously disbursed but unspent SCW Program Contributions for the terminated portion of the Funded Activity and the Recipient shall thereafter have no further obligation under this Agreement to implement the terminated portion of the Funded Activity, but this Agreement shall remain in full force and effect as to the portion of the Funded Activity not terminated.

EXHIBIT D – NATURE BASED SOLUTIONS (NBS) BEST MANAGEMENT PRACTICES

Municipalities shall consider incorporation of Nature-based solutions (NBS) into their projects. NBS refers to the sustainable management and use of nature for undertaking socio-environmental challenges, including climate change, water security, water pollution, food security, human health, and disaster risk management. As this environmental management practice is increasingly incorporated into projects for the SCW Program, this guidance document may be expanded upon to further quantify NBS practices based on benefits derived from their incorporation on projects.

The SCW Program defines Nature-Based Solutions as a Project that utilizes natural processes that slow, detain, infiltrate or filter Stormwater or Urban Runoff. These methods may include relying predominantly on soils and vegetation; increasing the permeability of Impermeable Areas; protecting undeveloped mountains and floodplains; creating and restoring riparian habitat and wetlands; creating rain gardens, bioswales, and parkway basins; enhancing soil through composting, mulching; and, planting trees and vegetation, with preference for native species. Nature-Based Solutions may also be designed to provide additional benefits such as sequestering carbon, supporting biodiversity, providing shade, creating and enhancing parks and open space, and improving quality of life for surrounding communities. Nature-Based Solutions include Projects that mimic natural processes, such as green streets, spreading grounds and planted areas with water storage capacity. Nature-Based Solutions may capture stormwater to improve water quality, collect water for reuse or aquifer recharge, or to support vegetation growth utilizing natural processes.

Municipalities are to include in each quarterly and annual report whether and how their project achieves a good, better, or best for each of the 6 NBS methods in accordance with the guidance below. Additionally, reports should include discussion on any considerations taken to maximize the class within each method. If at least 3 methods score within a single class, the overall project can be characterized as that class.



METHODS	GOOD	BETTER	BEST
Vegetation/Green Space	Use of climate-appropriate, eco-friendly vegetation (groundcover, shrubs, and trees) / green space 5%-15% covered by new climate-appropriate vegetation	Use of native, climate-appropriate, eco-friendly vegetation (groundcover, shrubs, and trees) / green space 16%-35% covered by new native vegetation	Establishment of plant communities with a diversity of native vegetation (groundcover, shrubs, and trees) / green space that is both native and climate-appropriate More than 35% covered by new native vegetation
Increase of Permeability	Installation of vegetated landscape – 25%-49% paved area removed Redesign of existing impermeable surfaces and/or installation of permeable surfaces (e.g. permeable pavement and infiltration trenches)	Installation of vegetated landscape – 50%-74% paved area removed Improvements of soil health (e.g., compaction reduction)	Installation of vegetated landscape – 75%-100% paved area removed Creation of well-connected and self-sustained natural landscapes with healthy soils, permeable surfaces, and appropriate vegetation
Protection of Undeveloped Mountains & Floodplains	<ul style="list-style-type: none"> • Preservation of native vegetation • Minimal negative impact to existing drainage system 	<ul style="list-style-type: none"> • Preservation of native vegetation • Installation of new feature(s) to improve existing drainage system 	<ul style="list-style-type: none"> • Creation of open green space • Installation of features to improve natural hydrology
Creation & Restoration of Riparian Habitat & Wetlands	<ul style="list-style-type: none"> • Partial restoration of existing riparian habitat and wetlands • Planting of climate appropriate vegetation - between 11 and 20 different climate-appropriate or native plant species newly planted • No potable water used to sustain the wetland 	<ul style="list-style-type: none"> • Full restoration of existing riparian habitat and wetlands • Planting of native vegetation - between 21 and 40 different native plant species newly planted • No potable water used to sustain the wetland 	<ul style="list-style-type: none"> • Full restoration and expansion of existing riparian habitat and wetlands Planting of plant communities with a diversity of native vegetation – between 41 and 50 different native plant species newly planted • No potable water used to sustain the wetland

<p>New Landscape Elements</p>	<p>Elements designed to capture runoff for other simple usage (e.g. rain gardens and cisterns), capturing the 85th percentile 24-hour storm event for at least 50% of the entire parcel</p>	<p>Elements that design to capture/redirect runoff and filter pollution (e.g. bioswales and parkway basins), capturing the 85th percentile 24-hour storm event from the entire parcel</p>	<p>Large sized elements that capture and treat runoff to supplement or replace existing water systems (e.g. wetlands, daylighting streams, groundwater infiltration, floodplain reclamation), capturing the 90th percentile 24-hour storm event from the entire parcel and/or capturing off-site runoff</p>
<p>Enhancement of Soil</p>	<p>Use of soil amendments such as mulch and compost to retain moisture in the soil and prevent erosion Planting of new climate-appropriate vegetation to enhance soil organic matter</p>	<p>Use of soil amendments such as mulch and compost that are locally generated to retain moisture in the soil, prevent erosion, and support locally-based composting and other soil enhancement activities Planting of new native, climate-appropriate vegetation to enhance soil organic matter</p>	<p>Use of soil amendments such as mulch and compost that are locally generated, especially use of next-generation design with regenerative adsorbents (e.g. woodchips, biochar) to retain moisture in the soil, prevent erosion, and support on-site composting and other soil enhancement activities Planting of new native, climate appropriate vegetation to enhance soil organic matter</p>

EXHIBIT E – OPERATIONS AND MAINTENANCE GUIDANCE DOCUMENT

Municipalities shall operate and maintain infrastructure projects for the useful life of the project and are to consider using the following guidance for operations and maintenance for infrastructure projects. Operational maintenance is the care and upkeep of Projects that may require detailed technical knowledge of the Project's function and design. Operational maintenance may include but not be limited to those activities listed below. Operational maintenance is to be performed by the operator of the Project with a purpose to make the operator aware of the state of readiness of the Project to deliver stormwater and urban runoff benefits.

1. Litter Control

- Weekly removal of litter, nonhazardous waste materials, and accumulated debris near planted areas, rock areas, decomposed granite areas, rest areas, fence perimeters, adjoining access roads and driveways, drains, pedestrian trails, viewing stations, shelter houses, and bicycle pathways.
- Weekly inspection and maintenance of pet waste stations
- Maintaining trash receptacles
- Removal of trash, debris, and blockages from bioswales
- Inspection and cleaning of trash booms
- Inspection of weir gates and stop logs to clean debris, as required.

2. Vegetation Maintenance

- Weed control
 - Recognition and removal of weeds, such as perennial weeds, morning glory, vine-type weeds, ragweed, and other underground spreading weeds.
 - Avoiding activities that result in weed seed germination (e.g. frequent soil cultivation near trees or shrubs)
 - Weekly removal of weeds from landscape areas, including from berms, painted areas, rock areas, gravel areas, pavement cracks along access roads and driveways, drains, pedestrian trails, viewing stations, park shelters, and bicycle paths.
- Tree and shrubbery trimming and care
 - Removal of dead trees and elimination of diseased/damaged growth
 - Prevent encroachment of adjacent property and provide vertical clearance
 - Inspect for dead or diseased plants weekly
- Wetland vegetation and landscape maintenance
 - Installation and maintenance of hydrophytic and emergent plants in perennially wet and seasonal, intermittent habitats.
 - Draining and drawdown of wetland and excessive bulrush removal
 - Weed and nuisance plant control

- Removal of aquatic vegetation (e.g. algae and primrose) using appropriate water craft and harvesting equipment
- Wild flower and meadow maintenance
- Grass, sedge, and yarrow management
- Removal of unwanted hydroseed

3. Wildlife Management

- Exotic species control
- Provide habitat management; promote growth of plants at appropriate densities and promote habitat structure for animal species
- Protect sensitive animal species (e.g. protection during critical life stages including breeding and migration)
- Avoid disturbances to nesting birds
- Avoid spread of invasive aquatic species

4. Facility Inspection

- Inspect project sites for rodent and insect infestations on a weekly basis
- Inspect for and report graffiti in shelter houses, viewing stations, benches, paving surfaces, walls, fences, and educational and directional signs
- Inspect facilities for hazardous conditions on roads and trails (e.g. access roads and trails, decomposed granite pathways, and maintenance roads)
- Inspect shade structures for structural damage or defacement
- Inspect hardscapes
- Inspect and maintain interpretive and informational signs
- Inspect site furnishings (e.g. benches, hitching posts, bicycle racks)
- Maintain deck areas (e.g. benches, signs, decking surfaces)
- Visually inspect weirs and flap gates for damage; grease to prevent locking.
- Inspect all structures after major storm events, periodically inspect every 3 months, and operate gates through full cycles to prevent them from locking up.

5. Irrigation System Management

- Ensuring automatic irrigation controllers are functioning properly and providing various plant species with proper amount of water.
 - Cycle controller(s) through each station manually and automatically to determine if all facets are functioning properly.
 - Inspection should be performed at least monthly.
 - Recover, replace, or refasten displaced or damaged valve box covers.
 - Inspect and repair bubbler heads.
 - Repair and replace broken drip lines or emitters causing a loss of water (to prevent ponding and erosion).

- Maintain drip system filters to prevent emitters from clogging. Inspection and cleaning should occur at least monthly.
- Inspect and clean mainline filters, wye strainers, basket filters, and filters at backflow devices twice a year.
- Maintain and check function of the drip system.

- Keeping irrigation control boxes clear of vegetation
- Operating irrigation system to ensure it does not cause excessively wet, waterlogged areas, and slope failure
- Utilizing infrequent deep watering techniques to encourage deep rooting, drought tolerant plant characteristics to promote a self-sustaining, irrigation free landscape
- Determine watering schedules based on season, weather, variation in plant size, and plant varieties. At least four times a year (e.g. change of season), reschedule controller systems.
- Turn off irrigation systems at the controller at the beginning of the rainy season, or when the soil has a high enough moisture content.
- Use moisture sensing devices to determine water penetration in soil.

6. Erosion Management and Control

- Inspect slopes for erosion during each maintenance activity
- Inspect basins for erosion
- Take corrective measures as needed, including filling eroded surfaces, reinstalling or extending bank protection, and replanting exposed soil.

7. Ongoing Monitoring Activities

- Monitor controllable intake water flow and water elevation
- Examine inflow and outflow structures to ensure devices are functioning properly and are free of obstructions.
- Quarterly water quality sampling
- Checking telemetry equipment
- Tracking and reporting inspection and maintenance records

8. Vector and Nuisance Insect Control

- Monitoring for the presence of vector and nuisance insect species
- Adequate pretreatment of influent wastewater to lessen production of larval mosquitos
- Managing emergent vegetation
- Using hydraulic control structures to rapidly dewater emergent marsh areas
- Managing flow velocities to reduce propagation of vectors