

## FLUORIDATION FUNDING AGREEMENT

THIS FLUORIDATION FUNDING AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_, 2010 (the “**Effective Date**”), by and between CALIFORNIA DENTAL ASSOCIATION FOUNDATION, a California nonprofit public benefit corporation (the “**Foundation**”), and CITY OF WATSONVILLE, a municipal corporation in the State of California, duly organized, existing, and acting pursuant to the laws thereof (the “**City**”), which parties do hereby agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement have the meanings specified in this Section 1 or elsewhere in this Agreement, unless the context clearly requires otherwise.

- (a) “**City Event of Default**” is defined in Section 18(a)(1) of this Agreement.
- (b) “**DDWEM**” shall mean the Division of Drinking Water and Environmental Management of the California Department of Health Services (“DDWEM”).
- (c) “**Eligible Phase One Costs**” shall mean all costs associated with the design and construction of the Project, except as otherwise provided in Section 8(g) of this Agreement.
- (d) “**Eligible Phase Two Costs**” shall mean all costs associated with the operation and maintenance of the Project.
- (e) “**Force Account**” shall mean the use of the City’s own employees or equipment for planning, preliminary engineering, design, construction, or construction related activities on the Project.
- (f) “**Foundation Event of Default**” is defined in Section 18(b)(1) of this Agreement.
- (g) “**GAAP**” is defined in Section 13(a) of this Agreement.
- (h) “**Project**” is defined in Section 2(a) of this Agreement.
- (i) “**Phase One Completion Date**” is defined in Section 10 of this Agreement.
- (j) “**Phase Two Completion Date**” shall mean the last day of the month that is twelve (12) months after the Phase One Completion Date.
- (k) “**Public Water System**” shall have the meaning set forth in Health and Safety Code section 116275(h), as amended from time to time.

2. Purpose of Funding.

(a) This Agreement constitutes funding in the form of a grant made by the Foundation to the City. The purpose of the funding is to provide all the capital and associated funds necessary for fluoridation of the City's Public Water System, and all the noncapital and operation and maintenance funds necessary for fluoridation of the City's Public Water System for a period of one (1) year (collectively, the "**Project**"), as long as sufficient funds are provided by the Foundation. Funds may be used only for Eligible Phase One Costs and Eligible Phase Two Costs as are approved by the Foundation.

(b) The Foundation shall provide the City with adequate funding, and the City shall design, construct, operate, and maintain the Project to the extents such funds are provided.. The City is solely responsible for the design, construction, operation, and maintenance of the Project and for all persons or entities engaged in such work, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The parties understand and agree that the Foundation has acted solely as financing entity to assure the proper use of the grant funds, and that any decision by the Foundation to exercise or refrain from exercising any review or approval rights of plans, specifications, bid documents, or other construction documents under this Agreement shall be made as a financier in the course of financing this effort and shall not be construed as making the Foundation a party to any contract. The City shall include the foregoing provisions in all its contracts or subcontracts related to the Project.

3. Project Cost. The City represents that, in anticipation of entering into this Agreement, it engaged the professional engineering services of Corollo Engineers to provide a cost estimate for the Project, and based on that cost estimate, the total cost of the Project is estimated to be \$1,620,000 of which \$1,300,000 is for Eligible Phase One Costs and \$320,000 (2 years at \$160,000 per year) is for Eligible Phase Two Costs.

4. Grant Amount. Subject to the terms and conditions of this Agreement, and except as otherwise agreed by the parties pursuant to a "Change Order" (as described in Section 5(a) below), the Foundation will provide grant funding to the City in an amount not to exceed \$1,820,000, \$200,000 of which is for planning, design and preparation of plans and specifications..

5. Design and Construction of Project.

(a) Project Design. The Project shall be constructed in accordance with plans and specifications which shall be prepared at the request of the City. A preliminary scope of work is forth in **Exhibit A** attached hereto. Once approved by the DDWEM, the plans and specifications may be modified only by a written "Change Order" executed by the Foundation and the City, which clearly describes (i) the change, and (ii) any modification of the plans and specifications necessitated by the Change Order. The Foundation shall not unreasonably withhold or delay its approval of any change; provided, however, the Foundation may withhold in its sole and absolute discretion its approval of any change if the construction costs related to the change exceed ten percent (10%) of the original approved amount.

(b) Disputes. The City shall be solely responsible for resolution of any and all disputes arising out of or related to the City's contracts for construction of the Project, including, but not limited to, bid disputes and payment disputes with the City's contractors and subcontractors and shall provide appropriate releases (as set forth in Title 15 of the California Civil Code) as may be requested by the Foundation.

6. Operation and Maintenance of Project. Commencing on the Phase One Completion Date and continuing up to and including the Phase Two Completion Date, and provided that grant funding for Eligible Phase Two Costs is available under the terms of this Agreement, the City (a) shall commence and continue operation of the Project; (b) shall cause the Project to be operated in an efficient and economical manner; (c) shall provide for the making of all repairs, renewals, and replacements necessary for the effective operation of the Project; and (d) shall cause the Project to be maintained in as good of condition as upon its construction, ordinary and reasonable wear and depreciation excepted.

7. Separate Account. Prior to the disbursement of any funds under this Agreement, the City shall establish a separate account entitled "CDAF Fluoridation Account" for deposit of funds disbursed as provided in Section 13(a) of this Agreement, and shall inform the Foundation of such account number.

8. Disbursements by Foundation.

(a) Claims. The City shall request disbursement by submitting to the Foundation a claim(s) for incurred Eligible Phase One Costs and Eligible Phase Two Costs. A claim for funds shall be submitted no more than once a month and the City shall provide the following information:

(1) Eligible Phase One Costs.

(i) A statement of the incurred Eligible Phase One Costs for work performed in designing and constructing the Project during the period identified in the particular claim;

(ii) A claim for incurred Eligible Phase One Costs that have been incurred for the Project during the period identified in the particular claim, including, but not limited to, City's use of its own employees for legal, engineering, and administrative fees associated with the Project (as described in Section 8(g) below); and

(iii) The initials of the City's engineering consultant, certifying that the claim being submitted accurately reflects the work performed in designing and constructing the Project during the period identified in the particular claim.

(2) Eligible Phase Two Costs.

(i) A statement of the incurred Eligible Phase Two Costs for work performed in operating and maintaining the Project during the period identified in the particular claim;

(ii) A claim for incurred Eligible Phase Two Costs that have been incurred for the Project during the period identified in the particular claim, including, but not limited to, chemical procurement, operations and maintenance, and regulatory compliance associated with the Project; and

(iii) The initials of the City's engineering consultant, certifying that the claim being submitted accurately reflects the work performed in operating and maintaining the Project during the period identified in the particular claim.

(b) Disbursements. Following the review and approval of a claim by the Foundation, the Foundation will disburse to the City the approved amount. The Foundation shall pay the approved amount within fifteen (15) days of receipt of the claim. Any and all funds disbursed to the City under this Agreement, and any and all interest earned by the City on such funds, shall be used solely to pay Eligible Phase One Costs and Eligible Phase Two Costs.

(c) Rejection of Claims. A claim may be rejected by the Foundation if:

(1) It is submitted without signature;

(2) It is submitted under signature of a person other than the City's duly authorized representative;

(3) The City fails to timely submit final claims for Eligible Phase One Costs and Eligible Phase Two Costs within the time periods specified in Sections 8(f)(1) and (2), respectively, of this Agreement.

The Foundation shall notify the City of any claim so rejected, and the reasons therefore.

(d) Correction of Claims. A claim containing a mathematical error will be corrected by the Foundation, after telephone notification to the City, and will thereafter be treated as if submitted in the corrected amount. The Foundation will confirm correction of the error to the City in writing.

(e) Adjustments to Claims. If, upon a review of a claim, the Foundation determines that any portion or portions of the costs claimed (1) are ineligible to be financed by the terms of this Agreement, or (2) do not constitute costs associated with the Project as approved by the Foundation for financing with the proceeds of the subject grant under the terms of this Agreement, the Foundation will promptly notify the City of its determination. The City shall, within thirty (30) days of the date of receipt of such notice, submit additional documentation or evidence to the Foundation substantiating the eligibility or approval of such costs. The Foundation will adjust the pending claim by the amount of the ineligible or

unapproved cost unless and until such time as the City timely submits additional documentation or evidence to cause the Foundation to reverse its determination with respect to any such costs. The City may resubmit any costs subsequently approved on a succeeding claim.

(f) Final Claims and Disbursements.

(1) Final Claim for Eligible Phase One Costs. The City shall submit a final claim for Eligible Phase One Costs not later than six (6) months from the Phase One Completion Date. With the final claim, the City shall provide: (1) a statement of full written disclosure of all sources and amounts of funds contributed for Eligible Phase One Costs; (2) a certification by the City's duly authorized representative that the data disclosed is true and correct; (3) proof of a recorded notice of completion; and (4) the initials of the City's engineering consultant, certifying that the final claim submitted accurately reflects the work performed in designing and constructing the Project during the period identified in the final claim.

(2) Final Claim for Eligible Phase Two Costs. The City shall submit a final claim for Eligible Phase Two Costs not later than six (6) months from the Phase Two Completion Date. With the final claim, the City shall provide: (1) a statement of full written disclosure of all sources and amounts of funds contributed for Eligible Phase Two Costs; (2) a certification by the City's duly authorized representative that the data disclosed is true and correct; and (3) the initials of the City's engineering consultant, certifying that the final claim being submitted accurately reflects the work performed in operating and maintaining the Project during the period identified in the final claim.

(g) Force Account. Costs of construction or construction related activities which are performed with Force Account, are ineligible costs, and claims that include any such costs will be adjusted accordingly; provided, however, the City may use its own employees for engineering including development of plans and specifications, legal, and administrative costs. If the City is using the services of its own employees, the City shall establish accounts and maintain records which reasonably document all employee hours and costs charged to the Project and the associated tasks performed by each employee.

9. Compliance with Laws, Regulations, and Permit Requirements. The City shall at all times comply with, and require its contractors or subcontractors to comply with, all applicable federal and state laws, rules, regulations, permits, and local ordinances, specifically including, but not limited to, environmental, procurements, and safety laws, rules, regulations, permits, and local ordinances.

10. Final Inspection. The City shall certify to the Foundation that the construction of the Project is complete and ready for final inspection. The City shall obtain an operations certificate and approval of the operating permit from the DDWEM prior to all facilities being placed into operation. The date of such certification shall be the "**Phase One Completion Date**" for purposes of this Agreement. The City agrees to proceed expeditiously and shall meet a Phase One Completion Date of not later than two (2) years from the Effective Date, which date may be extended only upon written approval of the Foundation. The Foundation shall not unreasonably withhold its consent to the extension of the Phase One Completion Date. Notwithstanding the

foregoing, the Foundation may withhold in its sole and absolute discretion its approval of the extension of the Phase One Completion Date if the City's failure to meet the Phase One Completion Date was as a consequence of a willful or negligent act or omission of the City or the City's designated representative, the City's contractors or subcontractors, and/or City's agents or employees which interferes with the progress of construction of the Project.

11. Remittance of Unexpended Funds.

(a) Eligible Phase One Costs. The City agrees that, within a period of thirty (30) days from the final disbursement of funds for Eligible Phase One Costs, the City shall remit to the Foundation any unexpended funds that were disbursed to the City under this Agreement and were not used to pay incurred Eligible Phase One Costs and shall be deemed to be a return to the Foundation of part of the funds disbursed.

(a) Eligible Phase Two Costs. The City agrees that, within a period of thirty (30) days from the final disbursement of funds for Eligible Phase Two Costs, the City shall remit to the Foundation any unexpended funds that were disbursed to the City under this Agreement and were not used to pay incurred Eligible Phase Two Costs and shall be deemed to be a return to the Foundation of part of the funds disbursed.

12. Maintenance and Inspection of Books and Records. During the term of this Agreement and for a period of one (1) year after payment of the final claim for Eligible Phase Two Costs under Section 8(f)(2) of this Agreement, the parties shall maintain all books and records pertaining to this Agreement or matters related hereto, including, but not limited to, all books and records of the City and contractors and subcontractors of the City, and shall, upon reasonable notice, make available at their respective offices during normal business hours such books and records for inspection and copying by the other party or their duly authorized representatives.

13. Accounting and Deposit of Grant Disbursements.

(a) Separate Accounting of Grant Disbursements. The City shall account for the funds disbursed pursuant to this Agreement separately from all other funds of the City. The City shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles ("**GAAP**"). The City shall keep complete and accurate books and records of all receipts, disbursements, and interest earned on expenditures of such funds. The City shall require its agents, contractors, and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with GAAP.

(b) Disposition of Funds Disbursed. In addition to specific requirements set forth in this Agreement, all funds disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to all provisions of law applicable to the City.

(c) Audits. The Foundation reserves the right to conduct audits at any time during the term of this Agreement and for a period of one (1) year after payment of the final claim for Eligible Phase Two Costs under Section 8(f)(2) of this Agreement.

14. Inspections of Project by Foundation. Upon reasonable notice to the City, the Foundation shall have the right, but not the duty, to inspect the work being performed on the Project at any and all reasonable times during the term of this Agreement. This right shall extend to any subcontracts, and the City shall include provisions ensuring such access in all its contracts or subcontracts related to the Project.

15. Prohibition against Disposal of Project without Foundation Permission. During the term of this Agreement, the City shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with the City's fluoridation treatment of its Public Water System, without prior written consent of the Foundation.

16. Workers' Compensation. The City represents and warrants that it is aware of the provisions of California Labor Code section 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that section, and the City further represents and warrants that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this section.

17. Performance and Assurances. The City agrees to faithfully and expeditiously perform or cause to be performed all work related to the construction Project as described in the final plans and specifications as submitted and approved, or as later amended and approved by the Foundation under this Agreement and to apply funds received only to Eligible Capital Costs.

18. Default.

(a) Default by City.

(1) Events of Default. The term "**City Event of Default**" means the occurrence of any of the following events:

(i) The City breaches Sections 6 and 10 of this Agreement; or

(ii) The City makes any false representation, warranty, or statement with respect to this Agreement or the Project.

(2) Remedies. If a City Event of Default occurs, the Foundation shall give the City notice of such default. The City shall have ten (10) calendar days from the date of such notice to cure the default. If the City fails to cure the default with the ten (10) day period to the satisfaction of the Foundation, the Foundation may take any of the following actions:

(i) Terminate any obligation of the Foundation to make future disbursements to the City under this Agreement;











