

## **LOCAL PRIMACY DELEGATION AGREEMENT**

This PRIMACY DELEGATION AGREEMENT (this “Agreement”) is entered into as of March 28, 2017, (the “Effective Date”) by and between the State of California Water Resources Control Board (hereinafter “State Board” or “Board”), Division of Drinking Water (hereinafter “Division”) and the County of Nevada (the “County”).

### **BACKGROUND**

A. The Division may delegate enforcement of the California Safe Drinking Water Act for small public water systems to local health officers under the terms and conditions of this Agreement.

B. The Division has adopted regulations specifying the requirements for a small public water system regulatory program by a local health officer under authority delegated by the Division.

C. The County has submitted a complete primacy delegation application (the “Application”) to the Division requesting delegation of primacy for the small public water system regulatory program within the County.

D. The Division has reviewed the Application submitted by the County and determined that the County is capable of conducting a small public water system regulatory program.

E. The Division hereby wishes to delegate to the County the authority to enforce state laws and regulations applicable to the delivery of drinking water to consumers by small public water systems pursuant to the terms of this Agreement, and the County hereby accepts such delegation.

F. All statutory references in this Agreement are to the California Health and Safety Code (“HSC”) as the same may be amended from time to time, unless otherwise noted.

G. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Division and the County agree as follows:

### **AGREEMENT**

#### **ARTICLE I. DELEGATION; DESIGNATION OF LOCAL PRIMACY AGENCY**

Section 1.01 Termination of Prior Agreement. This Agreement supersedes, in its entirety, the prior Delegation Agreement between the parties, which Delegation Agreement is hereby agreed to be of no further force or effect.

Section 1.02 Delegation and Reservation of Rights. The Division hereby delegates to the County all authority granted to it under the California Safe Drinking Water Act (HSC §116270 et. seq.) for regulation of small public water systems. This delegation does not

include regulation of community water systems serving 200 or more service connections. Notwithstanding the foregoing, the Division retains concurrent authority to regulate, and take enforcement action against, small public water systems within the County's jurisdiction to the extent determined necessary by the Division.

Section 1.03 Designation. The designated local primacy agency for the County of Nevada shall be its local health officer (the "LPA").

Section 1.04 Small Public Water Systems Not Subject to Delegation. The following small public water systems shall be regulated directly by the Division and are not subject to the delegation granted by this Agreement:

(a) All small public water systems owned and operated by agencies of the State of California; including the Department of Parks and Recreation, Department of Transportation, Department of Forestry, Department of Mental Health, Department of Corrections, Department of Veterans Affairs, and the Department of Water Resources;

(b) All small public water systems operated by the Chancellor of the University of California System or the Chancellor of the California State Universities and Colleges;

(c) All small public water systems owned or operated by the federal government except those that are: (1) operated by, or under the authority of, the U.S. Forest Service; or (2) campgrounds that are operated by, or under the authority of, the Bureau of Land Management or the Army Corps of Engineers.

## **ARTICLE II. LPA PROGRAM REQUIREMENTS**

### Section 2.01 Permitting of Small Public Water Systems.

(a) Issuance. The County shall cause the LPA to issue and maintain a valid drinking water permit ("Permit") for each public water system within the County's jurisdiction for which the State Board concurs that the permit may be issued as provided for in Health & Safety Code, section 116540 (b) (as amended by SB 1263 (2016)). The County shall cause the LPA to submit to the State Board a copy of each permit application for a new public water system and each technical report required by Health & Safety Code, section 116527. The County shall prohibit the LPA from issuing a Permit to any public water system unless it has received written concurrence from the State Board to issue the Permit. The Permit must be issued in conformity with and include all terms and conditions set forth in the Safe Drinking Water Act and the Permit Manual on the Division's FTP website (<https://ftp.waterboards.ca.gov/WebInterface/login.html>), and on any successor website, (hereinafter FTP website). The State Board shall notify the County within three (3) business days of making any change to any requirement on the FTP website that is referenced in the Agreement or these Amendments with which the County is required to comply.

(b) TMF Capacity. The County shall cause the LPA to deny a Permit to any small public water system that lacks adequate technical, managerial, and financial capacity, consistent with HSC § 116540(a).

(c) 10 Year Review. All Permits must be reviewed and updated as determined by the LPA at least once in every ten (10) year period, starting from the date of issuance.

#### Section 2.02 Annual Work Plan.

The work plan submitted and approved by the Division will be the LPA's program guide for the fiscal year 2013. Annually thereafter the County will submit an annual work plan, in form and substance as required by 22 CCR §64260, by May 1 of each year (the "Annual Work Plan"). Upon the Division's approval, the Annual Work Plan shall be considered a part of this Agreement. The Annual Work Plan may be used by the Division, in its sole discretion, as part of the ongoing evaluation of the conduct of the small public water system program by the County.

#### Section 2.03 Surveillance. The County shall cause the LPA to:

(a) Inventory. Establish and maintain an inventory of all small public water systems under its jurisdiction. The inventory must be updated annually and shall include the information specified in 22 CCR §64255(a).

(b) Routine Inspections. Conduct routine on-site inspections of each small public water system as required by 22 CCR §64255(b). This includes inspection of system operations, operation and maintenance records, system facilities and equipment.

(c) Sanitary Surveys. Conduct an on-site sanitary survey of each small public water system at least every three (3) years for community water systems and every five (5) years for non-community water systems. Such sanitary survey may be conducted in lieu of any routine inspection. Such a survey is intended to evaluate the adequacy and condition of the water source, facilities, equipment, and operation and maintenance procedures and records for producing and distributing safe drinking water. A sanitary survey must review the following components of a water system: (1) sources, (2) treatment, (3) distribution system, (4) finished water storage, (5) pumps, pump facilities, and controls, (6) monitoring and reporting and data verification, (7) system management and operation, and (8) operator certification compliance with State requirements.

(d) Follow-up. Identify deficiencies found during routine inspections and sanitary surveys, and, within 60 days of the date of completion of such routine physical inspection or sanitary survey, deliver a written follow-up notice to such small public water system describing the deficiencies and prescribing a schedule for corrective action.

(e) Reporting. Complete a written routine inspection or sanitary survey report for each such inspection or survey within 90 days of such routine physical inspection or sanitary survey's completion.

(f) Surface Water. Determine the small public water systems under its jurisdiction that utilize surface water or groundwater under the direct influence of surface water and are therefore subject to surface water treatment requirements.

Performance Evaluation. The Division will evaluate the LPA's surveillance performance based upon the requirements of this Section 2.03(a), and 2.03 (c)-(f).

Section 2.04 Sampling and Monitoring. The County shall cause the LPA to:

(a) Notice. Notify each small public water system under its jurisdiction in writing of the monitoring requirements for that system. Such notification shall be provided at least once every three (3) years for each community water systems and every five (5) years for each non-community water systems. The notice shall identify the specific contaminants to be monitored, the type of laboratory analyses required for each contaminant, the frequency of sampling, and any other sampling and reporting requirements applicable to that system. To assist with compliance with this Section 2.04, the Division shall provide guidance or related documents upon the LPA's request.

(b) Sample Siting Plan. Ensure that each small public water system under its jurisdiction complies with the sample siting plan requirements of 22 CCR §64422.

(c) Tracking System. Use a tracking system to assure that all required sampling and laboratory analyses are completed and reported by the small public water systems. The tracking system shall include the date the sample was collected, the type or purpose of the sample, the laboratory result, and the date the next sample is required to be collected.

(d) Compliance Records. Maintain an ongoing record of the status of compliance with monitoring and reporting requirements for each small public water system.

(e) Monitoring and Review. Establish and maintain a system to ensure that each public water system under its jurisdiction: (A) Is in compliance with all applicable requirements of California Code of Regulations, Title 22; and (B) Submits all required water quality data electronically to the Board. The County shall be deemed to be in compliance with requirement (A) with regard to any public water system that is out of compliance so long as the County is taking appropriate and timely enforcement action as provided for in Section 2.07.

Section 2.05 Data Management and Reporting.

(a) The County shall cause the LPA to comply with the Board's instructions on the FTP website regarding issuance of unsafe water alters, including, but not limited to, notifying the agencies identified in the document.

(b) The County shall cause the LPA to use: (1) SDWIS-State to report to the Division on or before 30 days after the last day of each calendar quarter each of those data elements in the SDWIS-State that are being implemented by the Division; (2) SDWIS-State to report to the Division any additional data element within 90 days of being notified that the Division has implemented the additional element; and (3) any database that is a successor to the SDWIS-State within 90 days of being notified that the Division has implemented the successor database as directed by the Board. The County shall cause the LPA to comply with all guidance on the Division's FTP SDWIS website (hereinafter "FTP-SDWIS website") relating to SDWIS-State data entry procedures and compliance management rules.

(c) The County shall cause the LPA to submit to the Board's Division of Information Technology and electronic PDF copy of each citation and each order issued by the LPA within 30 days of issuance and shall use the file naming convention and submission procedures that are provided on the FTP website.

(d) The County shall cause the LPA to submit to the Board an electronic copy of each pleading initiating a civil or criminal action that the County has filed or referred for filing against a public water system within 30 days of the later of the date of filing of the pleading or the date of receipt by the County of the pleading.

(e) The County shall cause the LPA to submit to the Board a written list of issued, amended or renewed domestic water supply permits for each public water system under the LPA regulatory jurisdiction electronically no later than 30 days after the last day of each calendar quarter. The list shall be in the format specified on the FTP website.

(f) The County shall cause the LPA to comply with all requests from the Board to issue an amended permit to public water systems regardless of whether the public water system submitted an application for an amended, provided that the Board has determined that the amended permit is necessary to protect public health.

(g) The County shall cause the LPA to make all reasonable effort to provide to the Board any communications it receives, including but not limited to, reports of oral communications, relating to matters under the board's authority that are not delegated to the LPA.

(h) The County shall cause the LPA to provide to the Board within five (5) business days all petitions for reconsideration as described in the Health and Safety Code section 116701 that the LPA receives from public water systems, and shall not take any other action with regard to any petition for reconsideration.

Section 2.06 Additional Data Reporting to the Division.

Unless otherwise directed by the Board, the County shall cause the LPA to: (a) by March 1 of each calendar year, direct all public water systems under its jurisdiction to submit by April 1 of each calendar year to the DRINC website an electronic annual report (hereinafter "EAR"); (b) by June 1 of each calendar year review each EAR and, if complete, accept such EAR; (c) by June 15 of each calendar year notify each public water system that failed to submit a timely, complete EAR that the water system must submit a complete EAR by July 1; and (d) by July 15, issue a citation for compliance order to each public water system that has not submitted a complete EAR. The LPA shall comply with the FTP website's EAR guidance documents.

Section 2.07 Enforcement. The County shall cause the LPA to take appropriate and timely enforcement action against small public water systems in accordance with California Code of Regulations, Title 22, section 64258 and consistent with the Division's Staff Guide to Compliance and Enforcement on the Division's Enforcement webpage (<http://drinc.ca.gov/tgs/Login.aspx?ReturnURL=Contact.aspx>).

Section 2.08 Compliance with Current Laws and Regulations. The County agrees to cause the LPA to comply with and enforce all applicable state laws and regulations and as each may be created or amended from time to time, including but not limited to HSC §116330, and 22 CCR, §§ 64253 - 64260. Each LPA will notify each small public water system under their jurisdiction of any new state or federal drinking water requirement applicable to those systems.

**ARTICLE III. LPA MANAGEMENT REQUIREMENTS**

Section 3.01 Dedicated Staff Time. The County shall cause the LPA to submit as a part of its Annual Work Plan pursuant to section 2.02: 1) the proposed staffing level for the fiscal year; and 2) justification that will demonstrate the proposed staffing level will meet the requirements of the Agreement.

Section 3.02 Adequate Staffing and Expertise. The County certifies that all LPA staff necessary to administer and fulfill the obligations delegated by this Agreement, including all technical and professional staff, have been hired or retained, and are adequately trained as of the Effective Date. The LPA may consult with the Division's staff and local district engineers for purposes of technical assistance at no cost to the LPA.

Section 3.03 Training. The Division shall provide appropriate training and technical consultation to the staff of the LPA regarding the implementation and enforcement of state and federal drinking water regulations.

Section 3.04 Program Management and Costs. The County shall cause the LPA to establish and maintain a time accounting system that provides an accurate record of all time spent by each LPA staff person in performing public water system activities. Each

entry in the time accounting system must include the following: date, staff identification, activity name/code, hours spent on activity.

Section 3.05 Local Ordinances. The County certifies that any applicable local ordinances as proposed in the County's Application have been adopted and are in effect as of the Effective Date.

Section 3.06 Program Management. The County shall cause the LPA to manage the LPA program in accordance with 22 CCR § 64259.

Section 3.07 Special Conditions. The County shall cause the LPA to satisfy the special terms and conditions set forth in Exhibit A. Failure by the LPA to satisfy the special terms and conditions may, at the option of the Division, result in breach of this Agreement.

Section 3.08 Confidentiality Agreement. The County shall cause the LPA to execute a Confidentiality Agreement with the Division, as more specifically provided in Exhibit B attached hereto.

Section 3.09 Incorporation of Other Documents. This Agreement incorporates by this reference: Exhibit A "Special Conditions", Exhibit B "Confidentiality Agreement", the Annual Work Plan, and the Application as submitted to and approved by Division, and any attachments to said documents. County agrees to comply with all terms, provisions, and conditions of this Agreement, including all incorporated documents and exhibits thereto, and to fulfill all assurances, representations, and statements made by County in the same.

#### **ARTICLE IV. GENERAL PROVISIONS.**

Section 4.01 Amendments; Waiver. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed and delivered by the Division. Any waiver of any provision of this Agreement, and any consent to any departure by the County from the terms of any provision of this Agreement, shall be effective only if in writing and only in the specific instance and for the specific purpose for which given.

Section 4.02 Notices. Any notice to be provided to a party to this Agreement shall be delivered to the following addresses:

State of California Water Resources Control Board  
Division of Drinking Water  
1001 I Street  
P.O. Box 100  
Sacramento, CA 95812-0100

County of Nevada Environmental Health Department  
950 Maidu Ave, Suite 170  
Nevada City, CA 95959-8600

Section 4.03 Term; Termination of Agreement. This Agreement shall remain in effect unless terminated pursuant to HSC §116330(c). No later than ninety (90) days after termination of this Agreement, the County shall cause the LPA to deliver all records pertaining to small public water systems in either Microsoft Word and/or PDF format.

Section 4.04 Successors and Assigns. This Agreement shall be binding upon the County, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Division and its successors, transferees, and assigns. The County shall not assign its rights or duties hereunder without the consent of the Division.

Section 4.05 Severability. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision. Should any provision of this Agreement be determined to be in conflict with the provisions of the Health and Safety Code or the California Code of Regulations, the provisions of those codes shall prevail.

Section 4.06 Captions. The captions or headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

Section 4.07 Entire Agreement. This Agreement, and the other documents specifically referred to herein, embody the entire agreement and understanding between the County and the Division with respect to the subject matter hereof and thereof. This Agreement supersedes all prior agreements and understandings relating to the subject matter hereof.

Section 4.08 Governing Law; Counterparts. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument.

Section 4.09 No Agency. Nothing in this Agreement is intended to or does establish the County as the agent for the Division, or grants to the County any powers, rights, or privileges other than those contained in this Agreement.

[Signatures on Following Page]



IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

**DIVISION:**

**COUNTY:**

**STATE OF CALIFORNIA  
DIVISION OF DRINKING WATER**

**[Authorized Signatory]**

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

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

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

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

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

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

## EXHIBIT "A"

### SPECIAL CONDITIONS

Article A-1. Supremacy of Special Conditions. Notwithstanding any other term or condition in this Agreement or any document attached hereto or incorporated by reference, including Exhibits A and B, the special conditions set forth in this Article A-1 shall control in the event of any conflict or discrepancy with any other term.

- 1) The LPA shall prioritize delegated responsibilities and tasks based upon public health.

The following conditions modify the referenced clause in the agreement:

- 2) Section 1.03 Designation. The designated local primacy agency for the County of Nevada shall be the Director of Nevada County Environmental Health Department (the "LPA"), the local comprehensive health agency as delegated by the local health officer and designated by the Nevada County Board of Supervisors.
- 3) Section 2.04 Sampling and Monitoring. The County shall cause the LPA to:
  - (a) Notice. Notify each small public water system under its jurisdiction in writing of the monitoring requirements for that system. Such notification shall be provided at least once every three (3) years for each community water systems and every five (5) years for each non-community water systems. The notice shall identify the specific contaminants to be monitored, the type of storet required for each contaminant in place of the type of laboratory analyses required for each contaminant, the frequency of sampling, and any other sampling and reporting requirements applicable to that system. To assist with compliance with this Section 2.04, the Division shall provide guidance or related documents upon the LPA's request.
- 4) Section 2.05 Data Management and Reporting. The County shall cause the LPA to establish and maintain a database of record and report data elements electronically to the Division in the format designated by the then current electronic submission specifications as follows:
  - (b) On a quarterly basis, no later than 30 days following the quarter being reported:
    - (iii) A list of small public water systems that are required to comply with the Lead and Copper Rule (LCR) requirements of 22 CCR Chapter 17.5 and the LPA's LCR data, including the name and identification number of the small public water system, LCR monitoring period frequency, water sample collection date, number of water samples collected, number of water samples required, the lead 90th percentile result, and the copper 90th percentile result. The LPA shall review and enter only the last historical sample set of LCR data available prior to

the Effective Date, for each water system to which it is applicable, into the relevant database, spreadsheet or equivalent. The LPA may request a copy of the Division's LCR database for tracking and reporting LCR data in order to clarify the information the LPA is required to track and report and to provide a template for the LPA's report of LCR data.

- 5) Section 2.07 Enforcement. The County shall cause the LPA to take enforcement action against small public water systems in accordance with 22 CCR § 64258 and consistent with the Division's enforcement manual, once this enforcement manual is updated, agreed upon by both parties, and the LPA is directed by the District Engineer to begin utilizing the Division's enforcement manual. As used in this Section, "enforcement action" shall be limited to the actions set forth in Division 104, Part 12, Chapter 4, Articles 9 (Remedies), 10 (Judicial Review) and 11 (Crimes and Penalties) of the HSC (commencing with HSC §116650).

Article A-2 Adequate Staffing. The "adequate" level of dedicated staff time referred to Section 3.01 of this Agreement means two (2) full-time dedicated employees (2.0 FTE) Environmental Health Specialists and associated administrative support. This adequate staffing shall be incorporated into the Annual Work Plan.

Article A-3 Notwithstanding anything to the contrary in this Agreement or any document attached hereto or incorporated by reference, Nevada County may make such disclosures as may be required by court orders or by applicable state or federal law, including, but not limited to, the California Public Records Act.

**EXHIBIT "B"**

**CONFIDENTIALITY AGREEMENT**

**STATE OF CALIFORNIA WATER RESOURCES CONTROL BOARD  
DIVISION OF DRINKING WATER**

**CONFIDENTIALITY AGREEMENT**

**WHEREAS** the State of California Water Resources Control Board, Division of Drinking Water (hereafter “Division”) and the County of Nevada (hereafter “County”) have entered into that certain Local Primacy Delegation Agreement of even date herewith (hereafter “LPDA”); and

**WHEREAS** in the performance of the LPDA, the Division will disclose to County records and information, or portions thereof, that are confidential and exempt from disclosure to the public.

**THEREFORE**, the Division and County hereby agree that County will use such records and information subject to the following terms and conditions effective as of \_\_\_\_\_, 20\_\_, (the “Effective Date”).

1. Confidential Information: The following shall be deemed “Confidential Information”:
  - a. Documents and records provided by the Division, including electronically stored and/or transmitted information, concerning the precise geographical location of public water systems’ drinking water sources, treatment facilities, pumping stations, distribution systems, and storage facilities for all public water systems in the County. These records may include maps, project plans or specifications, water supply permits/engineering reports, facilities lists; source water assessments, well driller’s logs, and schematic diagrams.
  - b. Documents, records, memoranda, policy and guidance documents and all other materials provided by the Division to County by means of any internal non-public websites or any other related or successor databases or sources that are managed by the Division and accessed by County.
  - c. Information or records provided by the Division that are marked “Confidential” or which are understood to be or intended to be treated as “Confidential”.
2. Non-Disclosure: County agrees to treat the “Confidential Information” as confidential and exempt from disclosure to the public, allowing access to the records only to those persons who are employed, retained, or otherwise under the control of the County and are subject to confidentiality obligations substantially similar to those contained herein (collectively “Permitted

Recipients”). County agrees to protect Confidential Information from disclosure to others to the greatest degree allowed by law.

3. Treatment of Non-Confidential Information: Information derived from sources other than the Division is not subject to this Agreement.
4. Use: County agrees to use Confidential Information only for official business purposes directly related to performance of the LPDA. To the extent that Confidential Information is used to create public reports, publications, maps, or other representations of the data contained in the records, physical addresses of public drinking water systems' sources, treatment facilities, pumping stations, distribution systems, and storage facilities will not be included, and any geographical locations of public drinking water systems' sources, treatment facilities, pumping stations, distribution systems, and storage facilities will be displayed or represented in a manner that is randomized within a one-mile radius.
  - a. Protective Order: To the extent that Confidential Information comprises part of an administrative record for, or are otherwise to be used in, administrative or judicial litigation, physical addresses and/or a higher resolution may be provided to the court under seal or subject to the court's protective order(s). County may request the Division provide a template for such a protective order.
5. Approval of Third Parties: County agrees that reports, publications, maps, or other representations or information contained in the Confidential Information will be released only to Permitted Recipients unless County has obtained the prior written approval of an authorized representative of the Division or a court order.
6. Notice: County agrees to notify the Division promptly of any requests or demands for disclosure of any Confidential Information, and to coordinate with the Division in its response to those requests. In addition, County agrees to immediately notify and coordinate with the Division regarding the initiation of any judicial proceeding to compel the County to disclose Confidential Information and/or any representation based thereon. County further agrees to seek direction from the Division regarding further judicial review or appeal of any such order and shall act in accordance with such direction from the Division.
7. Amendments: the Division and County agree that this Agreement may not be amended, except in writing signed by authorized representatives of the Division and County.
8. Continuity of Obligations: County agrees that its obligations under this Agreement shall continue indefinitely until the parties agree in writing to the contrary.

9. Destruction: County agrees to destroy any Confidential Information disclosed by the Division as soon as County is finished using it and to notify the Division when it has been destroyed.
10. Governing Law: the Division and County agree that this Agreement shall be governed by and construed in accordance with the laws of the State of California.

By their signatures below, the Division and County represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

**County**

Signature: \_\_\_\_\_

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

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

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

**Division**

Signature: \_\_\_\_\_

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

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

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