

HEBER PUBLIC UTILITY DISTRICT

REPORT TO BOARD OF DIRECTORS

MEETING DATE: June 18, 2015

FROM: Laura Fischer, General Manager

SUBJECT: Information Only Regarding Finance Agreement with State Water Board and Heber Public Utility District to Complete the Water Treatment Plant Improvement Project.

INFORMATION ONLY

On July 2, 2013, the Heber Public Utility District submitted an application for funding of the Water Treatment Plant Improvement Project to the Department of Public Health (CDPH). Also in July 2013, the CDPH deemed our application as complete. In 2014 the State merged two divisions that regulate the water industry. This merger resulted in a delay of over 18 months. After the dust had settled the new Water Board started to move our project forward and last week we received a draft Finance Agreement.

The Financing terms are for the full project cost, which is estimated at \$6,215,984. The forgivable loan (grant amount) is \$3,000,000 and the loan for 3,215,984 is for a term of 30 years at zero (0%) interest.

NEXT STEPS:

The HPUD Board has authorized the General Manager to sign the Finance Agreement and other related documents upon review from legal counsel. The Bond attorney, Ms. Diana Chuang from Richard Watson and Gerson has notified us that we must adopt the tax-exempt bond post-issuance compliance guidelines, and this Resolution is on your agenda for June 18th. After adoption of this Resolution, staff will execute the Finance Agreement and submit the necessary documents to the State Water Board.

Once all documents from HPUD and our general and bond counsel have been submitted, HPUD will move forward with bidding the project. The plans are currently under final review by the State water board and we expect to have them ready within a few weeks. The project schedule is as follows:

Heber Public Utility District - 4 MGD Water Treatment Plant Improvement Project

Task No.	Task	Time Frame	Anticipated Start Date	Completion Date
1.	Completion of 95% Project Design Documents			June 2013
2.	Completion of Final Project Design Documents			May 2015
3.	HPUD and Agency approval to Advertise Project for Bidding	2 mos.	May 2015	June 2015
4.	Complete Bidding Phase	3 mos.	July 2015	September 2015
5.	HPUD and Agency approval to Award Construction Contract	2 mos.	October 2015	November 2015

6.	Construction of Water Treatment Plant Improvement Project	14 mos.	December 2015	January 2017
7.	Start-up of Water Treatment Plant	2 mos.	January 2017	February 2017

Respectfully Submitted,

Laura Fischer,
General Manager

Attachments: Finance Agreement
 Cost Estimate



State Water Resources Control Board

June 12, 2015

Laura Fischer, General Manager
Heber Public Utility District
1078 Dogwood Road, Suite 103
Heber, CA 92249

Agreement Number: 14-300-550; Project Number: 1310007-002C

Enclosed is your Funding Agreement for your approval and signature. This Funding Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board.

Also, the District must submit the approved and executed General and Special Counsel Legal Opinion Letters that are signed either the same day as the District signs the Agreement or after. I will process the Agreement for execution by the State Water Board once I have received the signature pages and letters.

If in agreement with all terms and conditions of the Funding Agreement, please have the authorized representative, as noted in the executed resolution, sign **three (3) signature** pages; return the three (3) signature pages and executed resolution no later than **sixty (60) calendar days** to:

<u>Overnight Mail</u>	<u>US Mail</u>
Seresa Hartwell	Seresa Hartwell
Divisions of Financial Assistance	Divisions of Financial Assistance
State Water Resources Control Board	State Water Resources Control Board
Division of Financial Assistance	Division of Financial Assistance
1616 Capitol Avenue, MS 7408	P. O. Box 997377, MS 7408
Sacramento, CA 95814	Sacramento, CA 95899-7377

In order for the Funding Agreement to be executed by SWRCB, the following items **must also be returned with the signed Funding Agreement:**

1. Opinion of General Counsel;
2. A completed and signed Water Measurement Law Self certification;
3. A completed and signed Certification for Contracts, Grants, Loans, Cooperative Agreements; and,
4. A Data Universal Numbering System (DUNS) Number information document; and

5. A completed and signed Highly Compensated Individual Reporting Form (copy enclosed).

Be aware that all projects receiving funding must comply with Public Resources Code Section 75075 and all applicable implementing guidelines and regulations adopted by California Department of Industrial Relations (DIR), regarding Labor Compliance Programs. You must contact DIR for guidance on how to comply. Information can be found at: <http://www.dir.ca.gov/lcp.asp>.

Ms. Hartwell may be contacted at (916) 449-5640 or seresa.hartwell@waterboards.ca.gov.

Once the approval is obtained, we will forward an executed copy for your records.

Enclosures



HEBER PUBLIC UTILITY DISTRICT

AND

STATE WATER RESOURCES CONTROL BOARD



INSTALLMENT SALE AGREEMENT

WATER TREATMENT PLANT IMPROVEMENT PROJECT

PROJECT NUMBER: 1310007-002C

Construction Financing

Agreement No. 14-300-550

AMOUNT: \$6,236,000

START DATE: April 29, 2015

END DATE: January 1, 2049

DATED AS OF June 12, 2015

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- Attachment 2. Deposit Account Maintenance Agreement (Article A-3(b))
- Attachment 3. Initial Budget Summary (Article A-3(d))
- Attachment 4. Schedule for Submission of Claims for Reimbursement (Article A-3(e))
- Attachment 5. Claim for Disbursement of Funds (Article A-6(a))
- Attachment 6. Final Release (Article A-6(f)(4))
- Attachment 7. Supplier's Certification of Project Completion (Article A-8(b))
- Attachment 8. Davis-Bacon Wage Provisions (Article A-32)
- Attachment 9. SWRCB-SDWSRF Minority Business Enterprise – Women's Business Enterprise Goals for Participation (Article E-3)
- Attachment 10. Guidelines for Meeting the California State Revolving Fund (CASRF) Programs (Clean Water and Drinking Water SRF) Disadvantaged Business Enterprise Requirements (Article E-3)

THIS INSTALLMENT SALE AGREEMENT (this "Agreement") is entered into by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (the "State Water Board") and Heber Public Utility District, a public agency, in the County of Imperial, State of California, duly organized, existing, and acting pursuant to the laws thereof, ("Supplier"), which parties do hereby agree as follows:

SECTION 1. PURPOSE OF AGREEMENT

- (a) The United States of America, pursuant to section 1452 of the federal Safe Drinking Water Act (42 U.S.C. § 300j-12) (the "Federal Act"), requires each state to establish a drinking water treatment revolving loan fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Federal Act. The State of California (the "State") has established a Drinking Water State Revolving Fund (the "DWSRF") pursuant to the provisions of the Safe Drinking Water State Revolving Fund Law of 1997, Chapter 4.5 (commencing with Section 116760), of Part 12 of Division 104 of the Health and Safety Code ("State Act"). The State Water Board is the state agency authorized to administer the DWSRF and provide financial assistance from the DWSRF to suppliers for the construction of eligible projects, as provided in the State Act.
- (b) The Supplier has applied to the State Water Board for financial assistance from the DWSRF, for the purpose of financing or refinancing the Project described below, and the State Water Board has reviewed and approved said application.
- (c) The Supplier has or will incur costs incurred in connection with the planning, design, acquisition, construction, and/or installation of the Project described in this Agreement.
- (d) On the basis of the Supplier's application and the representations and warranties set forth herein, the State Water Board proposes to assist in financing the costs of the Project and/or to refund outstanding bonds, notes, or other debt obligations of the Supplier, if any, issued to finance the Project, and the Supplier desires to participate as a recipient of financial assistance from the DWSRF and evidence its obligation to pay Installment Payments, which obligation will be secured by Net Revenues, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.
- (e) The purpose of the financing is to assist in financing construction of a project which will enable Supplier to meet safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116270), of Part 12 of Division 104 of the Health and Safety Code and California Code of Regulations, Title 22, or to address other health concerns (the "Project").
- (f) Funds may be used only for such Eligible Project Costs as are approved by the State Water Board.

SECTION 2. NOTE

This Agreement also constitutes a secured promissory note for Supplier's obligation (the "Obligation") under the terms of this Agreement.

SECTION 3. PURCHASE AND SALE OF PROJECT

The Supplier hereby sells to the State Water Board and the State Water Board hereby purchases from the Supplier the Project. Simultaneously therewith, the Supplier hereby purchases from the State Water Board, and the State Water Board hereby sells to the Supplier, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Supplier on the Date of Execution of this Agreement without further action on the part of the Supplier or the State Water Board.

SECTION 4. INCORPORATION OF OTHER DOCUMENTS

This Agreement incorporates by this reference all attachments to this Agreement, Exhibit "A", "Standard Conditions"; Exhibit "B", "Security Requirements"; Exhibit "C", "Special Requirements"; Exhibit "D", "New Restrictions on Lobbying"; Exhibit "E", "Compliance with Cross-cutting Federal Authorities"; Exhibit "F", "Tax Covenants"; Exhibit "G", "Compliance with Cross-cutting State Authorities"; Exhibit "H", "Schedule of Material Obligations"; Supplier's "Application For Construction Funds"; project plans and specifications as submitted to and approved by the State Water Board; Supplier's Authorized Representative and Pledged Revenues and Funds Resolution No. 2015-1 dated March 19, 2015; and any attachments to said documents.

Supplier accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents and exhibits thereto, and to fulfill all assurances, declarations, representations, and statements made by Supplier in its application, documents, amendments, and communications filed in support of its request for this DWSRF financing, including but not limited to any and all plans and specifications submitted to and approved by the State Water Board.

SECTION 5. PROJECT COST

Supplier represents that the total cost of the Project is estimated to be \$6,236,000 (the "Project Cost").

SECTION 6. FINANCED AMOUNT, INTEREST, IN-LIEU CHARGE, AND TERM

- (a) Subject to the availability of funds, the State Water Board will provide to Supplier in accordance with the terms of this Agreement an amount not to exceed \$6,236,000 (the "Financed Amount").
- (b) The Supplier agrees to make all Installment Payments, including payments of principal, interest, and charges, as well as any Additional Payments, as set forth

in accordance with terms and conditions of this Agreement. Supplier's promise to pay as set forth in this paragraph shall survive termination of this Agreement for any reason including but not limited to operation of law.

- (c) Contingent on the Supplier's performance of its obligations under this Agreement, the State Water Board agrees to forgive up to three million (\$3,000,000) of the principal due under this Agreement. The State Water Board will determine the actual amount of principal forgiven at the time of the final Disbursement.
- (d) The rate of interest to be paid by Supplier shall be zero (0%) percent per annum (the "Rate of Interest"). Interest shall begin to accrue as of the date of each Disbursement (as defined in Article A-6(b), hereof). In lieu of all or a portion of the foregoing Rate of Interest, the Supplier agrees to pay a Small Community Emergency Grant Fund Charge in lieu of interest in the amount of zero (0%) percent per annum.
- (e) The payment term shall commence on the due date of the first Installment Payment and expire on the date that is thirty (30) years after the due date of the first Installment Payment (the "Payment Term").

SECTION 7. SUPPLIER'S COST

Supplier agrees to fund any portion of the Project Cost which is in excess of the Financed Amount. Supplier's cost for this Project is estimated to be \$0, ("Supplier's Cost"). Unless otherwise set forth in Exhibit "C" to this Agreement, "Special Requirements," such Supplier's Cost shall be expended prior to the expenditure of disbursements under this Agreement unless such Supplier's Cost is funded by other State or federal agencies, in which case funds shall be drawn on a pro-rata basis.

SECTION 8. COMPETITIVE BIDDING

All construction contracts related in any way to the Project shall be let by competitive bid procedures which assure award of such contracts to the lowest responsible bidders. Supplier shall adhere to any applicable state or local ordinance for competitive bidding and applicable labor laws.

Supplier shall not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the State Water Board. Where Supplier proposes to award a construction contract to anyone other than the lowest responsible bidder, it shall provide satisfactory documentation of its justification to the State Water Board's Division of Financial Assistance (the "Division").

SECTION 9. REQUIREMENTS FOR DISBURSEMENT

Not later than sixty (60) days following the Date of Execution (as defined in Section 15, hereof), Supplier shall satisfy all conditions precedent to any disbursement hereunder, including Basic Conditions Precedent as set forth in Article A-3, hereof. Failure by

Supplier to satisfy said conditions and requirements by this date may, at the option of the State Water Board, result in cancellation of this Agreement under Article A-7, hereof.

SECTION 10. SPECIAL REQUIREMENTS

Supplier shall satisfy the special requirements set forth in Exhibit "C". Failure by Supplier to timely satisfy the special requirements and conditions may, at the option of the State Water Board, result in cancellation of this Agreement under Article A-7, hereof, or declaration that Supplier is in default pursuant to Article A-27, hereof.

SECTION 11. OPERATION AND MAINTENANCE OF PROJECT

Upon Project Completion and for a period of at least thirty (30) years thereafter, which is the reasonably expected useful life of the Project ("Useful Life"), Supplier shall, as further consideration, commence and continue operation of the Project; shall cause the Project to be sufficiently and properly staffed and operated in an efficient and economical manner; shall provide for the making of all repairs, renewals, and replacements necessary for the effective operation of the Project; and shall cause the Project to be maintained in as good of condition as upon its construction, ordinary and reasonable wear and depreciation excepted. Failure by Supplier to operate and maintain the Project in accordance with this provision may, at the option of the State Water Board, be considered a material breach of this Agreement and may be treated as a default under Article A-27, hereof.

SECTION 12. [RESERVED]

SECTION 13. STATE REVIEWS AND INDEMNIFICATION

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the Supplier of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Supplier agrees to indemnify, defend, and hold harmless the State Water Board, and its officers, employees, and agents, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean

Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Supplier for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Supplier agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the discharge of the Supplier's Obligation hereunder.

SECTION 14. ENFORCEMENT

Any enforcement action, arising out of or relating to this Agreement may be brought by the State of California (the "State"), the State Water Board, or any agent thereof.

SECTION 15. ATTORNEY FEES

In the event either party commences an action or proceeding concerning the subject matter of this Agreement, each party in such action or proceeding shall bear its own costs and attorney fees.

SECTION 16. AUTHORIZED REPRESENTATIVE

All communications delivered to Supplier's Authorized Representative (as set forth in its resolution incorporated by reference in Section 4 herein) shall be deemed given to Supplier and shall be binding on Supplier.

SECTION 17. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

SECTION 18. GOVERNING LAW

This Agreement is governed by and shall be interpreted in accordance with the laws of the State.

SECTION 19. FEDERAL FINANCIAL ASSISTANCE

Supplier acknowledges that the source of funds disbursed to Supplier by the State Water Board under this Agreement may include federal financial assistance, and

Supplier agrees to comply with all applicable Cross-cutting Federal Authorities including those listed in Exhibit "E" to this Agreement, and provisions of the Single Audit Act as set forth in the Federal Office of Management and Budget (OMB) Circular A-133.

SECTION 20. LEGAL CAPACITY

Supplier hereby warrants and represents that it is a legal entity in good standing, that it has the authority to enter into this Agreement and to incur the indebtedness described herein, both under state and local law, and also pursuant to the eligibility requirements set forth in the DWSRF Policy Handbook as most recently adopted by the State Water Board and posted at http://www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_policy/dwsrf_policy_final.pdf.

SECTION 21. VENUE

The parties agree that venue of any action between the parties arising out of this Agreement, including disputes that may arise following termination of the Agreement, shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

SECTION 22. COMPLIANCE WITH LAW, REGULATIONS, POLICY.

The Supplier agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Supplier agrees that, to the extent applicable, the Supplier will:

- (1) Comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement;
- (2) Comply with the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," adopted October 21, 2014, effective January 1, 2015;
- (3) Comply with and require its contractors and subcontractors on the Project to comply with federal DBE requirements; and
- (4) Comply with and require its contractors and subcontractors to comply with the Cross-cutting Federal Authorities set forth in Exhibit E.

SECTION 23. INDEPENDENT ACTOR.

The Supplier, 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 State Water Board.

SECTION 24. NO THIRD PARTY RIGHTS.

Except as expressly provided herein, 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.

[Signatures appear on the following page.]

SECTION 25. DATE OF EXECUTION

“Date of Execution” of this Agreement shall be the date of the latest in time execution by a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

STATE WATER RESOURCES CONTROL
BOARD

By _____

Darrin Polhemus
Print Name

Deputy Director
Title

Date

HEBER PUBLIC UTILITY DISTRICT

By _____
Signature

Print Name

Title

Address

City, State, Zip

Date

EXHIBIT A - STANDARD CONDITIONS

ARTICLE A-1. DEFINITIONS

Whenever in this Agreement the following terms are used, their meaning shall be as follows unless the context clearly requires otherwise:

“Agreement” means the Installment Sale Agreement to which this Exhibit A is appended, including any exhibits thereto.

“Bank” means the California Infrastructure and Economic Development Bank.

“Bonds” means any series of bonds issued by the Bank all or a portion of the proceeds of which may be applied to fund the Project in whole or in part or that are secured in whole or in part by Installment Payments paid hereunder.

“Code” as used in Exhibit F of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

“Completion of Construction” means that the Division has conducted a final inspection of the Project and has notified the Supplier that Project construction has been completed in conformance with the plans and specifications identified in this Agreement.

“Cross-cutting Federal Authorities” means Federal laws and Executive Orders that apply in federal financial assistance programs, or to projects and activities receiving federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. They are sometimes referred to as “cross-cutters.”

“Days” means calendar days unless otherwise expressly indicated.

“District Office” means District Office of the Division of Drinking Water of the State Water Resources Control Board.

“Division” means Division of Financial Assistance of the State Water Resources Control Board.

“Eligible Project Costs” means those project costs which are eligible under applicable State and federal law.

“Enterprise Fund” means the enterprise fund of the Supplier in which Revenues are deposited.

“Fiscal Agent” means a bank, which includes savings banks, savings and loan associations, credit unions and trust companies, or any other financial institution or entity approved by the State Water Board responsible for funds deposited for the payment of all amounts due to the State Water Board under the terms of this Agreement.

“Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the Supplier as its Fiscal Year in accordance with applicable law.

“Force Account” means the use of Supplier’s own employees or equipment, for planning, engineering, design, construction or construction related activities on the Project.

“Installment Payments” means Installment Payments due and payable by the Supplier to the State Water Board under this Agreement.

“Material Obligations” means all senior, parity, and subordinate obligations of the Supplier payable from Revenues as identified as of the date of this Agreement in Exhibit H, this Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

“Month” means calendar month unless otherwise expressly indicated.

“Net Revenues” means, for any Fiscal Year, so long as there may be any pre-existing and outstanding Material Obligation other than the Obligation, the definition of the term as defined under such Material Obligation, and thereafter, all Revenues received by the Supplier less the Operations and Maintenance Costs for such Fiscal Year.

“Obligation” means the obligation of the Supplier to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified herein.

“Operations and Maintenance Costs” means, so long as outstanding Material Obligations other than the Obligation are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Supplier for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Supplier that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums;

but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

“Principal Amount of the Obligation” means the total amount disbursed to Supplier under this Agreement less any principal forgiven pursuant to Section 6 of this Agreement.

“Project” means the Project financed by this Agreement as described in Section 1, subdivision (e) and in the documents incorporated by reference herein.

“Project Completion Date” means the date set forth in Article A-8.

“Revenues” means, for each Fiscal Year, all gross income and revenue received or receivable by the Supplier from the ownership or operation of the System, determined in accordance with generally accepted accounting principles, including all rates, fees, and charges (including connection fees and charges) as received by the Supplier for the services of the System, and all other income and revenue howsoever derived by the Supplier from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Supplier or held on the Supplier’s behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

“State Water Board” means the State Water Resources Control Board.

“System” means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Supplier, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Supplier and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

“Year” means calendar year unless otherwise expressly indicated.

ARTICLE A-2. TERM OF AGREEMENT

As reflected on the cover page of this Agreement, the term of this Agreement is from April 29, 2015 to January 1, 2049 (the “Term of Agreement”).

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

The State Water Board shall have no obligation to disburse the Financed Amount, or any portion thereof, unless and until Supplier has done all of the following:

(a) Supplier has executed all documents required to provide the security required by Article B-3, hereof;

(b) Supplier has executed a Deposit Account Maintenance Agreement substantially in the form of **Attachment 2** to this Agreement, and Supplier has established all accounts required by the Deposit Account Maintenance Agreement;

(c) [reserved];

(d) Supplier has submitted an initial budget summary to the State Water Board substantially in the form of **Attachment 3** to this Agreement and said initial budget summary has been approved by the State Water Board; and,

(e) Supplier has submitted a Schedule for Submission of Claims for Reimbursement (the "Schedule") in the form of **Attachment 4**. Supplier's Schedule shall comply with the time requirements for claim submission set forth in Article A-6(a) of this Agreement; and,

Determination of Supplier's satisfaction of the conditions of this Article A-3 is at the sole discretion of the State Water Board.

ARTICLE A-4. COMPLIANCE WITH LAWS, REGULATIONS, AND PERMIT REQUIREMENTS

Supplier shall at all times comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations, permits, and ordinances.

ARTICLE A-5. PROJECT CHANGES

Where this Agreement has been entered into prior to final plans and specifications approval, this Agreement will be amended to incorporate plans and specifications, and construction costs will not be available until such an amendment has occurred. The Project shall be constructed in accordance with the plans and specifications dated as of July 30, 2013. Supplier shall obtain written consent from the Division prior to making any change in the Project or issuing any change order to a contractor that might do the following: (1) affect the treatment process, (2) increase the capacity of any project component, (3) cause a significant change in the location of any project component, or (4) affect the timely completion of the Project.

Supplier may request a one-time increase in the Financed Amount. Such request shall be based upon the final accepted construction bids. Such request may be granted or denied at the sole discretion of the State Water Board and is subject to the availability of funds.

Supplier shall not use any funds from any contingency allotment without receiving prior written approval from the State Water Board.

ARTICLE A-6. DISBURSEMENTS

Notwithstanding any other term or condition of this Agreement, notices given by the State Water Board to Supplier under this Article A-6 need not be sent by certified or registered mail and may be sent electronically or by any other means available for delivery of a written notice.

(a) Claims. Supplier shall request Disbursement by submitting to the State Water Board a claim(s) for incurred Eligible Project Costs. A claim for Disbursement (as defined in Article A-6(b)) shall be provided in the form of **Attachment 5** to this Agreement. **Supplier must submit an initial claim not later than ninety (90) days following the Date of Execution for all eligible costs incurred prior to Date of Execution.** Thereafter, Supplier shall submit claims on a monthly basis. Each claim shall include, at a minimum, all eligible costs incurred on or before sixty (60) days prior to the date of the claim. Supplier expressly agrees that the State Water Board shall have the right to deny disbursement of funds for all costs incurred for which a claim is not timely submitted in accordance with the requirements of this paragraph. Each claim shall include:

(1) a statement of Eligible Project Costs that have been incurred for work performed in constructing the Project during the period identified in the particular claim;

(2) a statement of Eligible Project Costs that have been incurred for the Project during the period identified in the particular claim, including, but not limited to, legal, engineering, and administrative fees associated with the Project; and

(3) copies of invoices and receipts supporting such statements.

(b) Disbursements. Following its review and approval of a claim, the State Water Board will disburse to Supplier the approved amount, subject to the availability of funds (each, a "Disbursement"). All Disbursements, and any and all interest earned by Supplier on the Disbursements, shall be used solely to pay Eligible Project Costs.

(c) Rejection of Claims. The State Water Board may reject a claim if the claim:

(1) Is submitted without signature or under signature of a person other than Supplier's Authorized Representative;

(2) Is not timely submitted;

(3) Is not submitted in accordance with this Article A-6; or

(4) Contains costs incurred after the Project Completion Date (as defined in Article A-8, hereof).

The State Water Board will notify Supplier of any claim so rejected, and the reasons therefor.

(d) Correction of Claims. A claim containing a mathematical error will be corrected by the State Water Board and will thereafter be treated as if submitted in the corrected amount. The State Water Board will provide Supplier with notification of the corrected claim.

(e) Adjustments to Claims. The State Water Board will notify Supplier if it determines that any portion or portions of the costs claimed:

(1) Are ineligible to be financed,

(2) Do not constitute approved costs;

(3) Are not supported by acceptable invoices or receipts; or

(4) Contain costs incurred after the Project Completion Date (as defined in Article A-8).

Supplier may, within a reasonable time established by the Division, submit additional documentation to the State Water Board to cure such deficiency(ies). If Supplier fails to timely submit adequate documentation curing the deficiency(ies), the State Water Board will adjust the pending claim by the amount of the ineligible and/or unapproved cost(s). Supplier may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent claim.

(f) Final Claim and Disbursement. Supplier shall submit a final claim not later than six (6) months from the Project Completion Date, as set forth in Article A-8, hereof. In addition to the information required by subpart (a) of this Article A-6, the final claim shall include:

(1) A statement of full written disclosure of all sources and amounts of funds contributed to the Project;

(2) A certification by Supplier's Authorized Representative that the data disclosed is true and correct;

(3) Proof of a Recorded Notice of Completion; and

(4) A fully executed "Final Release" in the form of Attachment

6.

Should Supplier fail to make the full disclosure and certification required by subparts (1) and (2) of this paragraph (f), or should the State Water Board become aware through any means that Supplier did not disclose all funding sources for the Project, the State Water Board may refer this Agreement to the State Department of Finance for a full project audit.

Commencement of payment of the Installment Payments may be required prior to the final Disbursement.

(g) Force Account. Supplier may use its own employees for engineering including development of plans and specifications; legal; and administrative costs, as provided for in Supplier's initial budget summary, as required by Article A-3(f), hereof. Supplier may use its own employees for construction or construction related activities if Supplier has obtained prior State Water Board approval.

If Supplier is using the services of its own employees, Supplier 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.

ARTICLE A-7. WITHHOLDING OF DISBURSEMENTS AND CANCELLATION OF AGREEMENT

(a) Conditions for Withholding. If the State Water Board determines that the Project is not being carried out substantially in accordance with the provisions of this Agreement or that Supplier has failed in any other respect to comply with the terms and conditions of this Agreement, the State Water Board shall give notice to Supplier of such failure to comply. If Supplier does not cure any such failure to the State Water Board's satisfaction within a reasonable time established by the Division, the State Water Board may withhold from Supplier all or any portion of the Financed Amount and take any other action that it deems necessary to protect its interests, including but not limited to declaring Supplier in default as set forth in Article A-27, hereof, or canceling this Agreement pursuant to subpart (b) of this Article A-7.

(b) Withholding Entire Financed Amount. If the State Water Board determines to withhold the entire amount of this Agreement from Supplier, written notice of such a determination shall constitute a notice of cancellation of this Agreement, and this Agreement shall no longer be binding on any party hereto. Written notice of cancellation may be sent to Supplier by email or U.S. mail, and shall be effective upon receipt.

(c) Withholding Balance. Where the State Water Board has determined to withhold the balance of the Financed Amount, it shall notify Supplier that it is

withholding the balance of the Financed Amount from Supplier. In such event, Supplier is deemed to be in default and subject to the provisions of Article A-27, hereof.

ARTICLE A-8. TIMING OF PROJECT

(a) Supplier shall complete the Project not later than April 29, 2018. Supplier's failure to complete the Project within the specified time period may, at the option of the State Water Board, be considered a material breach of this Agreement and may be treated as a default under Article A-27, hereof.

(b) Within 15 days following completion of the Project, Supplier shall certify to the Division and the District Office of the State Water Board's Division of Drinking Water that the Project is complete and ready for final inspection. Supplier's certification, as required by this subpart (b), shall be substantially in the form provided by the State Water Board and attached hereto as **Attachment 7** to this Agreement.

(c) The Division will conduct a final inspection and certify that the Project is complete. Supplier shall not place the Project into operation prior to the Division's certification.

ARTICLE A-9. SUPPLIER'S CONTRACTS

Supplier shall be solely responsible for resolution of any and all disputes arising out of or related to Supplier's contracts for construction of the Project, including but not limited to bid disputes and payment disputes with Supplier's contractors and subcontractors and shall provide appropriate releases (as set forth in Division 3 of the Civil Code) as may be requested by the State Water Board.

ARTICLE A-10. AUDIT AND INSPECTION OF BOOKS AND RECORDS

(a) Upon execution of this Agreement and until thirty-six (36) years following final Disbursement, the Supplier and its contractors and subcontractors shall be subject to examination and audit by the State Water Board or any agent thereof. Parties are also subject to examination and audit of the United States Environmental Protection Agency, the Comptroller General of the United States, and the United States Office of the Inspector General, with respect to all matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records must be retained until such action is resolved, or until the end of said time period, whichever shall later occur. All records of Supplier relating in any way to funding received pursuant to this Agreement shall be preserved for this purpose.

(b) During regular office hours, the State Water Board, the United States Environmental Protection Agency, the Office of Inspector General, and any agent thereof shall have the right to inspect and to make copies of any books, records,

or reports of the Supplier pertaining to this Agreement or matters related hereto. The Supplier shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by Supplier to comply with this provision shall be considered a material breach of this Agreement, and the State Water Board may declare Supplier in default as set forth in Article A-27, withhold Disbursements to Supplier, or take any other action it deems necessary to protect its interests. The provisions of this subpart (b) shall be effective until expiration of the time period provided in subpart (a) of this Article A-10.

ARTICLE A-11. REMITTANCE OF UNUSED AMOUNTS

Within thirty (30) days from any Disbursement, Supplier shall remit to the State Water Board any funds that were disbursed under this Agreement and were not utilized to pay Eligible Project Costs or were otherwise not valid Disbursements pursuant to the terms and conditions of this Agreement.

Such remittance to the State Water Board shall not constitute an Installment Payment, but shall be deemed to be a return to the State Water Board of part of the funds disbursed.

ARTICLE A-12. INTEREST PAYMENTS DURING CONSTRUCTION

During construction, Supplier shall pay interest to the State Water Board at the rate specified in Section 6 of this Agreement on all Disbursements. Interest on Disbursements shall not be deferred.

The State Water Board will invoice Supplier semiannually for interest accrued during the Project construction period. Interest on each Disbursement shall be calculated using the fraction $x/365$ times the Rate of Interest, where x is the number of calendar days remaining in the semiannual period from the date on which the Disbursement was made. Interest accrued during the construction period is due and payable within thirty (30) days of the date of the invoice.

ARTICLE A-13. INSTALLMENT PAYMENTS

(a) Terms of Installment Payment.

State may, but is not required to, invoice Supplier semiannually for principal and any interest payments (the "P&I Invoice"). Regardless of receipt of invoices, Supplier shall make semiannual Installment Payments to the State Water Board no later than January 1 and July 1 of each year until the Obligation is satisfied. Principal and interest payments shall commence no later than one (1) year from the Project Completion Date. Supplier shall make level semiannual Installment Payments based on a standard semiannual payment amortization method to be determined by the State Water Board. The standard amortization method shall incorporate the Principal Amount of the

Obligation, the Payment Term specified in Section 6 of this Agreement, the Rate of Interest, as specified in Section 6 of this Agreement, and any additional charges due hereunder. The final semiannual payment shall be in an amount equal to the then outstanding Principal Amount of the Obligation, plus any remaining unpaid accrued interest. Interest on the Principal Amount of the Obligation shall not be deferred.

Unless earlier payment is required by the terms of this Agreement, the Installment Payments and any other charges or fees shall be due and payable thirty (30) years from the Project Completion Date.

(b) Advance Payment Option. Supplier may make advance payment against principal without penalty, provided that any such advance payment shall be applied first to interest then owed and then to principal, and provided further, that any such payment shall not relieve Supplier of its obligations to make Installment Payments in the amount and at the time specified in subpart (a) of this Article A-13 until the Obligation is satisfied. Any advance payment must be coordinated with the State Water Board prior to the making of any such payment to ensure proper credit to Supplier's account.

ARTICLE A-14. PAYMENT DELINQUENCY

The Supplier agrees to make each Installment Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred to the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other costs incurred. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate receivable and obligation of the Supplier. The interest penalty will be assessed from the payment due date.

ARTICLE A-15. ACCOUNTING AND DEPOSIT OF DISBURSEMENTS

(a) Separate Accounting of Disbursements and Interest; Records. Supplier shall account for Disbursements received separately from all other Supplier's funds. Supplier shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles. Supplier shall keep complete and accurate records of all receipts, invoices, Disbursements, and interest earned on the Disbursements. The Supplier agrees to comply with federal standards for financial management systems. The Supplier agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Supplier agrees to be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of

1984, Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto, including but not limited to Section 210(a)-(d). (Pub. L. 98-502.)

Supplier shall require its agents, contractors and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with Generally Accepted Accounting Principles.

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

(c) Interim and Final Audits. In addition to the provisions of Article A-10, at any time following the Date of Execution and until completion of the Project, or final Disbursement, whichever shall occur last, the State Water Board reserves the right to conduct an audit of Supplier's disposition of funds disbursed under this Agreement. After completion of the Project, the State Water Board may require Supplier to conduct a final audit at Supplier's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant.

Failure or refusal by Supplier to comply with these provisions shall be considered a material breach of this Agreement and the State Water Board may elect to pursue any remedies included but not limited to those provided in Article A-7, hereof.

ARTICLE A-16. INSPECTIONS AND ACCESS

The Supplier agrees to ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation. The Supplier acknowledges that, except for a subset of archeological records, the Project records and locations are public records, including all of the submissions accompanying the application, any documents incorporated by reference into this Agreement, and all reports, disbursement requests, and supporting documentation submitted hereunder.

ARTICLE A-17. PROHIBITION AGAINST DISPOSAL OF PROJECT

(a) Supplier 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 Supplier's service of domestic water, without prior written consent of the State Water Board. The State Water Board may require as a condition of such consent that Supplier's proceeds from any such disposition of any real or personal property be transferred to the State Water Board to be applied to Supplier's indebtedness under this Agreement.

(b) Supplier shall not take any action, including but not limited to actions relating to user fees, charges and assessments that could adversely affect the ability of Supplier to make timely payments or to otherwise meet its obligations under this Agreement.

ARTICLE A-18. NONDISCRIMINATION CLAUSE

- (a) During the Term of Agreement, Supplier, its contractors and subcontractors shall not deny this Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. Supplier, its contractors and subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- (b) Supplier, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.7) and the regulations or standards adopted by the awarding State agency to implement such article.
- (c) By signing this Agreement, Supplier assures the State Water Board that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989); Federal Water Pollution Control Act Amendments of 1972, Pub.L. No. 92-500, 86 Stat 816; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same (collectively, the "Anti-Discrimination Laws").
- (d) Supplier agrees to collect and maintain information to show compliance with the Anti-Discrimination Laws including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.
- (e) Supplier agrees to cooperate with the State Water Board in all manner necessary to permit the State Water Board to adequately report to the United States Environmental Protection Agency on Supplier's compliance with the Anti-Discrimination Laws.
- (f) Supplier, its contractors and subcontractors shall give written notice of their obligations under this Article A-18 to labor organizations with which they have a collective bargaining or other agreement.

- (g) Supplier's signature on this Agreement shall constitute a certification under the penalty of perjury under the laws of the State that Supplier has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990, and Title 2, California Code of Regulations Section 8103.
- (h) Supplier shall include the nondiscrimination and compliance provisions of this Article A-18 in all contracts and subcontracts to perform work on the Project.

ARTICLE A-19. WORKERS' COMPENSATION CLAUSE

Supplier affirms that it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Supplier affirms 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 provision.

ARTICLE A-20. SUCCESSORS AND ASSIGNS

The Supplier agrees and consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the Supplier, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

ARTICLE A-21. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive, and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE A-22. NOTICE

- (1) The Supplier agrees to notify the Division in writing within 5 days of the occurrence of the following:
 - (a) Principal and interest payment delinquencies on this Obligation;
 - (b) Non payment related defaults, if material;

- (c) Unscheduled draws on debt service reserves reflecting financial difficulties;
 - (d) Unscheduled draws on credit enhancements, if any, reflecting financial difficulties;
 - (e) Substitution of credit or liquidity providers, if any, or their failure to perform;
 - (f) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
 - (g) Rating changes on outstanding bonds, if any;
 - (h) Bankruptcy, insolvency, receivership or similar event of the Supplier;
 - (i) Actions taken in anticipation of filing Chapter 9, as required under state law;
 - (j) Any litigation pending or threatened against Supplier regarding its water capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Supplier's Revenues;
 - (k) Other Material Events or Listed Events;
 - (l) Change of ownership, organization, legal form or service area of the Project or change of management or service contract for operation of the Project;
 - (m) Negotiations regarding proposed parity obligations.
- (2) The Supplier agrees to notify the Division promptly of the following:
- (a) Any substantial change in scope of the Project. The Supplier agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;
 - (b) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (c) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;

- (d) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Supplier agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Supplier agrees to implement appropriate actions as directed by the Division;
- (e) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Supplier agrees to promptly notify the Division. This notification is in addition to the Supplier's obligations under the federal Endangered Species Act;
- (f) Any monitoring, demonstration, or other implementation activities such that the State Water Board staff may observe and document such activities;
- (g) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days' notice to both the Division and USEPA Region IX. The contact for USEPA Region IX is Juanita Licata at licata.juanita@epa.gov (415) 972-3450; or
- (h) Completion of Construction of the Project, and actual Project Completion.

ARTICLE A-23. AMENDMENTS

This Agreement may be amended only by mutual written agreement signed by the parties hereto. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties. Requests by Supplier for amendments must be in writing stating the amendment request and the reason for the request.

ARTICLE A-24. WAIVER OF RIGHTS

Either party may waive any of its rights under this Agreement unless contrary to law. Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

ARTICLE A-25. DISPUTES

The Supplier may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Supplier may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make

recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

The Supplier shall continue with the responsibilities under this Agreement during any dispute.

ARTICLE A-26. PERFORMANCE, ASSURANCES, AND REPORTS

- (a) Supplier agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications as submitted and approved, or as later amended and approved by the State Water Board under this Agreement and to apply funds received only to Eligible Project Costs and to operate and maintain the Project in accordance with applicable provisions of the law.
- (b) Quarterly Reports. The Supplier agrees to expeditiously provide status reports no less frequently than quarterly, starting with the execution of this Agreement. At a minimum the reports will contain the following information:
- a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
 - a description of compliance with environmental requirements;
 - a listing of change orders including amount, description of work, and change in contract amount and schedule;
 - any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (c) As Needed Reports. The Supplier agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the DWSRF Program or to fulfill any reporting requirements of the federal government.

ARTICLE A-27. DEFAULT PROVISIONS

(a) Supplier will be in default under this Agreement if any of the following occur (each, an "Event of Default"):

(1) Supplier's failure to pay any installment when due, or the entire indebtedness to the State Water Board when due at the designated due date;

(2) Supplier's failure to make any remittances required by this Agreement;

(3) Supplier's material breach of this Agreement, or any supplement or amendment hereto, or any other agreement between Supplier and the State Water Board evidencing or securing Supplier's obligations under this Agreement;

(4) Supplier's making of any false warranty, representation, or statement with respect to the Project or with respect to, or as required by, the terms of this Agreement;

(5) Loss, theft, damage or impairment to any collateral given as security under this Agreement;

(6) Seizure of, or levy on any collateral given as security under this Agreement; and/or

(7) Dissolution or cessation of operations by Supplier, termination of Supplier's existence, insolvency of Supplier, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Supplier.

(b) When an Event of Default occurs, the State Water Board shall give Supplier notice of default. Supplier shall have a reasonable time as established by the Division to cure the default. If Supplier fails to timely cure the default to the satisfaction of the State Water Board, the State Water Board may do any or all of the following:

(1) Declare that the aggregate amount of all Disbursements made by the State Water Board shall be deemed the Obligation, and shall be repaid to the State Water Board in accordance with the terms of this Agreement;

(2) Declare Supplier's obligations immediately due and payable, with or without demand or notice to Supplier, which Supplier expressly waives;

(3) Terminate any obligation of the State Water Board to make further Disbursements;

(4) Exercise all rights and remedies available to a secured creditor after default, including, but not limited to, the rights and remedies of secured creditors under the Uniform Commercial Code;

(5) Perform any of Supplier's obligations under this Agreement for Supplier's account;

(6) Notwithstanding the provisions of Section 6, hereof, commencing from the date of each Disbursement, apply the highest legal rate of interest to all Disbursements made by the State Water Board; and/or

(7) Take any other action it deems necessary to protect its interests.

(c) Supplier agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of a breach of this Agreement by Supplier, whether such breach occurs before or after completion of the Project.

(d) No waiver by the State Water Board of any breach or default will be a waiver of any other breach or default.

ARTICLE A-28. CONFLICT OF INTEREST--CURRENT AND FORMER STATE EMPLOYEES

Supplier shall comply with, and shall require that all of its owners, officers, directors, agents, representatives and employees are at all times in compliance with, currently applicable laws and regulations pertaining to conflicts of interest of current and former state employees, including but not limited to Government Code Sections 1090 et seq. and 87100 et seq.; Public Contract Code Section 10410 et seq.; and California Code of Regulations, Title 2, Sections 18700 et seq.

ARTICLE A-29. INSURANCE

(a) Construction Insurance. Supplier agrees that for any policy of general liability insurance concerning the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and shall provide the State Water Board with a copy of all such certificates prior to the commencement of construction of the Project.

(b) Long-term Insurance. The Supplier will procure and maintain or cause to be maintained insurance on the Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the Project) as are usually covered in connection with systems similar to the

Project. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Supplier of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

- (c) In the event of any damage to or destruction of the Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Project. The Supplier shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the Project shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable the Supplier to pay all remaining unpaid principal portions of the Installment Payments, the Supplier shall provide additional funds to restore or replace the damaged portions of the Project.

ARTICLE A-30. PROHIBITED USE OF STATE FUNDS FOR SOFTWARE

Supplier certifies that it has appropriate systems and controls in place to ensure that Disbursements will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

ARTICLE A-31. LABOR COMPLIANCE

Supplier shall comply with all applicable state and federal requirements regarding labor compliance. Supplier's failure or refusal to comply with this requirement shall be considered a material breach of this Agreement.

ARTICLE A-32. DAVIS-BACON ACT COMPLIANCE

Supplier understands and acknowledges that Pub.L 111-88 and Section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) make applicable provisions of sections 3141-3144, 3146, and 3147 of Title 40 of United States Code ("Davis-Bacon Act") and applicable regulations and guidance regarding wage rates payable to laborers and mechanics employed by contractors and subcontractors on the Project.

Supplier agrees to comply with all applicable Davis-Bacon Act requirements for all Project construction or construction related activities occurring on or after October 30, 2009.

On or after the Date of Execution, Supplier agrees to include, or cause to be included, in full, the applicable language set forth in **Attachment 8**, hereof, in all Project bid solicitation documents and in all Project contracts and subcontracts in excess of \$2,000 entered into for the actual construction, alteration and/or repair, including painting and decorating of any Project component.

The USEPA Region 9 has provided guidance on the Davis-Bacon Act requirements, which is attached hereto as "Attachment 8" and incorporated herein by reference. As used in **Attachment 8**, the term "subrecipient" means Supplier, and the terms "State", "State recipient" and "recipient" each mean the State Water Resources Control Board.

If Supplier is a governmental entity (including, without limitation, a city, county, city and county, or local agency), the applicable contract language that is required is set forth in Section I of **Attachment 8**.

Supplier shall send a report to the State Water Board at the end of each calendar quarter and on a form acceptable to the State Water Board, in which Supplier shall certify to the State Water Board that all applicable Davis-Bacon Act requirements for the Project are being complied with, including, without limitation, the requirement that Supplier certify to the State Water Board that Supplier is collecting and reviewing certified Davis-Bacon payrolls from Supplier's construction contractors. Supplier's failure to provide the quarterly reports required by this Article A-32 may result in the State Water Board's withholding Disbursements until the reports are provided in a form acceptable to the State Water Board.

ARTICLE A-33. NEW RESTRICTIONS ON LOBBYING

If Supplier receives \$100,000 or more in federal funds disbursed under this Agreement, Supplier agrees to comply with all requirements of Title 40 CFR Part 34, "New Restrictions on Lobbying", as the same may be amended from time to time, and to include, or cause to be included, in full, the language set forth in Exhibit "D" hereof, in all Project contracts and subcontracts.

ARTICLE A-34. SINGLE AUDIT ACT

If Supplier receives \$500,000 or more in federal awards in a year from any source, including federal funds disbursed under this Agreement, Supplier agrees to comply with all requirements of the Office of Management and Budget Circular A-133 issued pursuant to the Single Audit Act, as the same may be amended from time to time.

ARTICLE A-35. ADDITIONAL REPORTING

Supplier acknowledges that, from time to time during the term of this Agreement, the State Water Board may receive further guidance from the United States Environmental Protection Agency ("USEPA") which may require additional information/reporting from

Supplier. Upon such guidance from USEPA, the State Water Board will notify Supplier in writing. Upon notification, Supplier agrees to provide the requested information/reports to the State Water Board in the time period specified. Supplier's failure to provide the requested information/report in the time specified may be deemed by the State Water Board to be a material breach of this Agreement and may be treated as a default under Article A-27.

ARTICLE A-36. DATA UNIVERSAL NUMBER SYSTEM (DUNS)

Supplier shall maintain current DUNS registration(s) in the Dun & Bradstreet database (<http://fedgov.dnb.com/webform>) at all times during which they have active federal awards funded with DWSRF funds.

ARTICLE A-37. SIGNAGE

The Supplier shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period. The sign shall include the following color logos (available from the Division) and the following disclosure statement:



“Funding for this project has been provided in full or in part by the Drinking Water State Revolving Fund through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds.”

The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

The Supplier shall include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.)”

**ARTICLE A-38. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS OR
FEDERAL COMPLIANCE**

In the event that any breach of any of the provisions of this Agreement by the Supplier shall result in the loss of tax exempt status for any bonds of the State or any subdivision or agency thereof, including Bonds issued on behalf of the State Water Board, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Supplier shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

In the event that any breach of any of the provisions of this Agreement by the Supplier shall result in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Supplier shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

EXHIBIT B - SECURITY REQUIREMENTS

ARTICLE B-1. ADDITIONAL DEBT

(1) The Supplier's future debt may not be senior to this Obligation, except where:

- (A) the senior obligation refunds a senior obligation that predates the dated as of date of this Obligation, the new senior obligation has the same or earlier payment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Supplier's ability to satisfy this Obligation; or
- (B) the future senior obligation is a DWSRF obligation owed to the State Water Board.

(2) The Supplier's future debt may be on parity with this Obligation if the following conditions are met:

- (A) The Supplier's net revenues cover the highest year's debt service pursuant to the coverage ratio reflected in Exhibit C; and
- (B) One of the following conditions is met:
 - (A) The Supplier's proposed additional parity obligation is rated "A," or higher, by at least two nationally recognized rating agencies; or
 - (B) The Supplier is a disadvantaged community and the Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its parity debt;
 - (C) The Supplier is a disadvantaged community and the Division determines that requiring the proposed additional obligations to be subordinate to the Supplier's Obligation hereunder will unduly restrict the Supplier from obtaining future system debt necessary for water quality improvements; or
 - (D) The proposed additional obligation is DWSRF debt.

ARTICLE B-2. RATES AND CHARGES

Supplier agrees that it will levy and collect assessments or user charges as may be necessary to operate and to maintain the Project and to make Installment Payments when due; and if for any reason, Net Revenues prove insufficient to make Installment Payments due pursuant to this Agreement, Supplier agrees to raise sufficient funds

through increased user charges or assessments or any other legal means available to it to make Installment Payments and to operate and to maintain the Project.

ARTICLE B-3. SECURITY INTEREST

The Obligation hereunder shall be secured by a lien on and pledge of the Supplier's water enterprise fund ("Enterprise Fund"), Net Revenues, and Reserve Fund. Supplier hereby pledges and grants such lien on and pledge of its Net Revenues and Enterprise Fund to secure the Obligation, including Installment Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Supplier.

By its signature to this Agreement, Supplier certifies that any revenue derived from property-related fees and charges needed to satisfy its obligations under this Agreement, has been approved in accordance with Article XIII C and XIII D of the California Constitution (Proposition 218), or Supplier has obtained a legal opinion explaining why such procedures are not applicable.

The Supplier represents that this Agreement constitutes a valid and binding obligation of the Supplier, enforceable in accordance with its terms, except as such enforcement may be limited by law.

ARTICLE B-4. [RESERVED]

ARTICLE B-5. LEGAL OBLIGATION

This Agreement and payment due hereunder, shall not in any way be construed to be a debt of the Supplier in contravention of applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness, if any.

EXHIBIT C - SPECIAL REQUIREMENTS

ARTICLE C-1. SECURITY

Supplier grants to the State Water Board a security interest in the following:

- (a) The Collateral, as more fully described in Article B-3, hereof; and
- (b) [Reserved].

The State Water Board reserves the right to require, and Supplier agrees to provide, security in additional real and/or personal property which the State Water Board determines is reasonably necessary to secure payment of Supplier's obligations under this Agreement. Supplier shall execute any and all documents required by the State Water Board to create, perfect and maintain the State Water Board's security interest(s), including any amendments, modifications, and/or new or revised documents which the State Water Board determines are reasonably necessary to create, perfect, maintain, preserve, and protect the State Water Board's security interest(s).

ARTICLE C-2. ADDITIONAL REQUIREMENTS

(a) Commencing with construction of the Project and continuing throughout the Useful Life of the Project, Supplier is responsible for the implementation of practices substantially equivalent to the urban water conservation "best management practices" of the California Urban Water Conservation Council.

(b) Notwithstanding the time period to complete the Project provided in Article A-8(a) hereof, Supplier shall complete the project not later than April 29, 2018.

(c) Supplier agrees to comply with the Board's Drought Emergency Water Conservation regulations in Section 863-866 of title 23 of the California Code of Regulations.

(d) Supplier acknowledges and agrees that it is solely responsible for its compliance with provisions of the California Labor Code, including but not limited to provisions of Division 2, Part 7, Chapter 1, Section 1725.5 regarding the bidding and awarding of contracts for public works.

(e) Supplier shall submit a permit amendment application for the new distribution pipelines and associated structures to the San Diego District Office prior to completion of the construction Project.

(f) Supplier shall notify the San Diego District Office and SWRCB Project Manager when the Project is fifty (50%) percent complete.

(g) Supplier shall implement the mitigation measures identified in the Mitigated Negative Declaration, titled Water Treatment Plant Expansion Project (SCH#2009021069).

(h) Supplier shall conduct a preconstruction burrowing owl survey within 14 days of start of construction, and that report must be submitted to the United States Fish and Wildlife Service using reference number: FWS-IMP-14B0252-14I0126.

United States Fish and Wildlife Service
Ecological Services
Palm Springs Fish and Wildlife Office
Attention: Kennon A. Corey
777 East Tahquitz Canyon Way, Suite 208
Palm Springs, California 92262

(i) If construction is scheduled to begin during nesting season (February-August), Supplier shall ensure that a survey for nesting birds is performed within 7 days of groundbreaking activities and mitigation identified with the Biological Resources Evaluation, titled Water Treatment Plan Expansion Project is implemented.

(j) If any ground disturbing activities take place that could impact the Dogwood Canal adjacent to the Project site, Supplier shall ensure that archaeological and Native American monitors are present.

(k) Supplier shall provide an opportunity for a Native American monitor from the La Posta Band of Mission Indians to be present during excavation activities.

(l) If archaeological features or materials are unearthed during any phase of project activities, Supplier shall ensure that all work in the immediate vicinity of the find halts until Supplier has contacted the State and the significance of the resource has been evaluated. Any mitigation measures that may be deemed necessary must have the approval of the State's ERU, and shall be implemented, pursuant to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 CFR 44716, by a "qualified" archaeologist representing the Supplier prior to the resumption of construction activities.

(m) If human remains are exposed by activity related to the Project, Supplier must comply with California State Health and Safety Code, Section 7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to California Public Resources Code, Section 5097.98.

(n) Supplier shall establish rates and charges sufficient to generate net revenues to a least 1.2 times total annual debt service.

(o) This financing agreement is on parity with the USDA Rural Development Certificate of Participation dated July 17, 2009.

(p) Supplier agrees to provide for the accumulation of necessary reserves (the "Reserve Fund") to assure that funds will be available to make the semiannual payments when due. At a minimum, a reserve of two (2) semiannual payments shall be accumulated during the first ten (10) years of the Loan Repayment Term and thereafter be maintained at that level. The Reserve Fund is held in the Enterprise fund.

(q) Project Completion Report. The Supplier shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control Board on or before the due date established by the Division and the Supplier at the time of final project inspection. The Project Completion Report must address the following:

- (1) describe the Project,
- (2) describe the water quality or quantity problem the Project sought to address,
- (3) discuss the Project's likelihood of successfully addressing that water quality or quantity problem in the future, and
- (4) summarize compliance with environmental conditions, if applicable.

Where the Supplier fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

EXHIBIT D - NEW RESTRICTIONS ON LOBBYING

40 CFR Part 34 – New Restrictions on Lobbying

Subpart A—General

§34.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§34.105 Definitions.

For purposes of this part:

(a) Agency, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) Covered Federal action means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) Federal contract means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) Federal cooperative agreement means a cooperative agreement entered into by an agency.

(e) Federal grant means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) Federal loan means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) Loan guarantee and loan insurance means an agency's guarantee or insurance of a loan made by a person.

(j) Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) Recipient includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§34.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

Subpart B—Activities by Own Employees

§34.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in §34.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§34.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §34.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§34.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§34.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §34.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §34.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§34.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§34.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§34.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§34.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§34.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§34.605 Inspector General Report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

EXHIBIT E - COMPLIANCE WITH CROSS-CUTTING FEDERAL AUTHORITIES

ARTICLE E-1. COMPLIANCE WITH FEDERAL AUTHORITIES

(a) By its signature to this Agreement to which this Exhibit "E" is attached, Supplier agrees to comply with all applicable state and federal laws and authorities, including but not limited to the federal authorities listed below; and to the fullest extent required by law, shall require compliance with said authorities by its contractors and subcontractors on the Project.

- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549
- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352 (2)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

(b) In partial compliance with the above list of Cross-cutting Federal Authorities, Supplier agrees to take certain actions specifically set forth in the following Articles:

ARTICLE E-2. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

Supplier agrees that it shall be deemed to be a contractor and shall comply with the following requirements in that role:

(a) During the performance of this Agreement, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, or age. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Federal Government setting forth the provisions of the Equal Opportunity Clause and the Rehabilitation Act of 1973. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental handicap, or age, and the rights of applicants and employees.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, or age.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding of notice, to be provided by the Federal Government advising the labor union or workers' representative of the contractor's commitments under the Equal Opportunities Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of the Rehabilitation Act of 1973 and of the Federal Executive Order No. 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Federal Executive Order No. 11246, as amended, and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the requirements of this Equal Opportunity Clause or with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further federal contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended, and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) of this Article E-2 in every contract, subcontract or purchase order related to this Agreement unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246, as amended, or section 503 of the Rehabilitation Act of 1973, so that such provisions will be binding upon each contractor, subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor or the Director of Federal Compliance Programs or the State Water Board may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request in writing to the State Water Board, which, in turn, may request the United States to enter into such litigation to protect the interests of the United States and the State Water Board.

Each contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of Federal Executive Order 11246, as amended, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(b) In addition, if the Project is to be constructed in a geographical area that has been designated by the Office of Federal Contract Compliance for special treatment, Supplier agrees that it will undertake, and will require its contractors and

subcontractors to undertake affirmative action programs in accordance with regulations and other directives promulgated by that Office.

ARTICLE E-3. PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES

(a) Supplier acknowledges that Executive Orders 11625, 12138, and 12432 are applicable to this Agreement, and that the United States Environmental Agency (EPA) adopted regulations to implement those requirements [40 Code of Federal Regulations Part 33 Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs – {Federal DBE Regulations}]. In compliance with Federal DBE Regulations, the State Water Board has negotiated “Fair Share Objectives” with EPA for participation of Minority Business Enterprises and Women’s Business Enterprises in procurement activity undertaken with funds made available to Supplier under this Agreement. The “Fair Share Objectives” are set forth in the SWRCB – SDWSRF Minority Business Enterprise – Women’s Enterprise Goals for Participation attached as **Attachment 9** to this Agreement and incorporated herein by this reference. Supplier agrees that it will cooperate with and assist the State Water Board in realizing the “Fair Share Objectives” and will exercise good faith efforts to achieve such participation of disadvantaged business enterprises, and in particular agrees that in the selection of construction contractors, and for the procurement of equipment, supplies, construction, and services related to the project, it, at a minimum, has or will undertake the following affirmative steps:

- (1) Include disadvantage business enterprises on solicitation lists;
- (2) Assure that disadvantaged business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged business enterprises;
- (4) Establish delivery schedules, when the requirements of the work permit, which will encourage participation by disadvantaged business enterprises;
- (5) Use the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, and the California Unified Certification at the California Department of Transportation, as appropriate; and
- (6) If any contractor awards subagreements, require the contractor to take the affirmative steps in paragraphs (1) through (5) of this paragraph.

(b) Supplier agrees that prior to the award of any contract for the procurement of equipment, supplies, construction, or services related to the Project, it has or will review the efforts of such contractor to include disadvantaged business enterprises and

will assure the State Water Board that such contractor has complied with the requirements of this Article F-3. A form for providing said assurance will be provided by the State Water Board in a form substantially similar to that of **Attachment 10** to this Agreement.

(c) As required by Federal DBE Regulations, Supplier agrees to circulate bid solicitation(s) for this project for a minimum of 15 days.

(d) As required by Federal DBE Regulations, Supplier agrees to require prime contractor to pay subcontractors for satisfactory performance within 30 days from the prime contractor's receipt of payment from the Supplier.

(e) Supplier agrees to include in procurement solicitation provisions related to the utilization of Disadvantaged Business Enterprises and Supplier further agrees to include in each procurement solicitation EPA Form 6100-2, EPA Form 6100-3, and EPA Form 6100-4 as required by Federal DBE Regulations which are included in **Attachment 10**.

(f) Supplier agrees to submit the Good Faith Effort documentation received from the selected prime contractor bidder to the State Water Board.

(g) As required by Federal DBE Regulations, Supplier agrees to create and maintain a bidders list of all firms that bid or quote on prime contracts or bid or quote subcontracts on the project. Supplier shall maintain bidders list until Supplier has certified project completion to State. (See **Attachment 10**.)

(h) Supplier agrees to report DBE utilization to State's Division of Financial Assistance ("Division") on the DBE Utilization Report, State Water Board Form DBE UR334 included in Attachment 11 to this Agreement. Supplier must submit such reports to the Division annually, within ten (10) days after October 1, throughout the project, until after submission of the final claim.

ARTICLE E-4. PROCUREMENT PROHIBITIONS

By its signature on this Agreement, Supplier certifies that it will not procure goods, services, or materials from any entity, or otherwise utilize any facility for the construction of the Project, if such entity or facility is listed on the USEPA's List of Violating Facilities, and Supplier further certifies it will comply with the provisions of Executive Order No.11738, 3 C.F.R. 799 (1973), Section 306 of the Clean Air Act 42 U.S.C. 7606 (1994) and Section 508 of the Clean Water Act 33 U.S.C. 1368 (1982).

ARTICLE E-5. DEBARMENT AND SUSPENSION

Supplier agrees that for purposes of the following subparts (a) and (b), Supplier is the "prospective lower tier participant", and this Installment Sale Agreement is the "proposal".

(a) Instructions for Certification

(1) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

(4) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

(5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(6) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. The prospective lower tier participant shall submit to the State Water Board all certification submitted pursuant to this paragraph.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ARTICLE E-6. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION ACT

Supplier will comply, or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 42 U.S.C. 4655), as amended, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase.

ARTICLE E-7. GAAP.

Supplier must maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB). The SUPPLIER shall maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

ARTICLE E-8. AMERICAN IRON AND STEEL.

Unless the Supplier has obtained a waiver from USEPA on file with the State Water Board, the Supplier shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Supplier has obtained a waiver from USEPA on file with the State Water Board, the Supplier hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

ARTICLE E-9. EXECUTIVE COMPENSATION.

Where the Supplier received 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), the Supplier agrees to notify the State Water Board. The Supplier agrees to provide information regarding executive compensation to the State Water Board upon request, in order for the State Water Board to comply with USEPA requirements.

ARTICLE E-10. TRAFFICKING IN PERSONS.

The Supplier, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Supplier must include this provision in its contracts and subcontracts under this Agreement. The Supplier must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Supplier understands that failure to comply with this provision may subject the State Water Board to loss of federal funds in an amount exceeding the Financed Amount. The Supplier agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement and full payment will be due immediately, if a Supplier or subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

ARTICLE E-11. ADDITIONAL CROSS-CUTTERS.

Environmental Authorities

1. Archeological and Historical Preservation Act of 1974, Pub. L. 86-523, as amended, Pub. L. 93-291 16 USC § 469a-1.

2. Clean Air Act, Pub. L. 84-159, as amended.
3. Coastal Barrier Resources Act, Pub. L. 97-348, 96 Stat. 1653; 16 USC § 3501 et seq.
4. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 USC § 1451 et seq.
5. Endangered Species Act, Pub. L. 93-205, as amended; 16 USC § 1531 et seq..
6. Environmental Justice, Executive Order 12898.
7. Floodplain Management, Executive Order, 11988 as amended by Executive Order 12148.
8. Protection of Wetlands, Executive Order 11990, as amended by Executive Order No. 12608.
9. Farmland Protection Policy Act, Pub. L. 97-98; 7 USC § 4201 et seq.
10. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
11. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 80 Stat. 917 (1966) 16 USC § 470 et seq.
12. Safe Drinking Water Act, Pub. L. 93-523, as amended; 42 USC § 300f et seq.
13. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 82 Stat. 913; 16 USC § 1271 et seq.
14. Essential Fish Habitat Consultation. Pub. L. 94-265, as amended, 16 USC § 1801 et seq.
15. Recycled Materials. Executive Order 13101; Section 6002 Resource Conservation and Recovery Act – 42 USC § 6962.

Economic and Miscellaneous Authorities

1. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372/ 42 USC § 3331 et seq.
2. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368; 40 CFR Part 31.

3. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655
4. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, EO 13202, as amended by EO 13208.
6. Hotel and Motel Fire Safety Act of 1990 (PL 101-391, as amended). All conference, meeting, convention, or training funded in whole or in part with federal funds shall comply with the protection and control guidelines of this act. Suppliers may search <http://www.usfa.dhs.gov/applications/hotel/>.
7. Records and financial reporting requirements. 40 CFR Part 31.
8. Copyright requirements. 40 CFR Part 31.

Social Policy Authorities

1. Age Discrimination Act of 1975, Pub. L. 94-135; 42 USC § 6102.
2. Race Discrimination. Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.1; 42 USC § 2000d; 40 CFR Part 7.
3. Sex Discrimination. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act); 33 USC § 1251; 40 CFR Part 7.
4. Disability Discrimination. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250); 29 USC § 794; 40 CFR Part 7.
5. Equal Employment Opportunity, Executive Order 11246.
6. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

EXHIBIT F - TAX COVENANTS

F.1 Purpose.

The purpose of this Exhibit is to establish the reasonable expectations of the Supplier regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Exhibit F sets forth certain facts, estimates and circumstances which form the basis for the Supplier's expectation that neither the Project nor the Project Funds will be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

F.2 Tax Covenant.

The Supplier agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project which would result in the loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

F.3 Governmental Unit.

The Supplier is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof.

F.4 Financing of a Capital Project.

The Supplier will use the Project Funds to finance costs it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project. Such costs have not previously been financed with the proceeds of any other issue of tax-exempt obligations.

F.5 Ownership and Operation of Project.

The Supplier exclusively owns and, except as provided in Section F.12 hereof, operates the Project.

F.6 Temporary Period.

The Supplier reasonably expects that at least eighty-five percent (85%) of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Supplier has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not

subject to contingencies within the control of the Supplier or a related party) to a third party to expend at least five percent (5%) of the Project Funds on the costs of the Project. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of Project Funds to expenditures for the Project will proceed with due diligence.

F.7 Working Capital.

No operational expenditures of the Supplier or any related entity are being, have been or will be financed or refinanced with Project Funds.

F.8 Expenditure of Proceeds.

Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section G.20 below), (ii) Preliminary Expenditures (as defined in Section F.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Supplier on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Project Funds.

F.9 Private Use and Private Payments.

None of the Project Funds or the Project are, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). None of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local governmental unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as

reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is predetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

F.10 No Sale, Lease or Private Operation of the Project.

The Project will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section F.12 hereof, the Supplier will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered (to the extent of its reasonable control) with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

F.11 No Disproportionate or Unrelated Use.

None of the Project Funds or the Project are, have been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

F.12 Management and Service Contracts.

With respect to management and service contracts, the determination of whether a particular use constitutes Private Use shall be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations, Revenue Procedure 97-13, and other applicable rules and regulations. As of the date hereof, none of the Project Funds or the Project are being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than Governmental Units) that involve the management of property or the provision of services that do not comply with the standards of the Treasury Regulations and Revenue Procedure 97-13.

Except to the extent the Supplier has received an opinion of counsel expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel") and satisfactory to the State Water Board and the Bank to the contrary, the Supplier will

not enter into any management or service contracts with any person or entity that is not a Governmental Unit for services to be provided with respect to the Project except with respect to contracts where the following requirements are complied with: (i) the compensation is reasonable for the services rendered; (ii) the compensation is not based, in whole or in part, on a share of net profits from the operation of the Project; (iii) not more than twenty percent (20%) of the voting power of the Supplier in the aggregate may be vested in the service provider and its directors, officers, shareholders, and employees and vice versa; (iv) any overlapping board members between the Supplier and the service provider must not include the chief executive officer or executive director of either, or their respective governing bodies; and (v):

- (a) At least ninety-five percent (95%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee which is a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. A fee shall not fail to qualify as a periodic fixed fee as a result of a one (1) time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is a single stated dollar amount. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and fifteen (15) years for "public utility property" within the meaning of Section 168(i)(10) of the Code);
- (b) At least eighty percent (80%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and ten (10) years. A one (1) time incentive award during the term of the contract similar to the award described in subsection (a) above is permitted under this option as well;
- (c) At least fifty percent (50%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or combination of a periodic fixed fee and a capitation fee. A capitation fee is a fixed periodic amount for each person for whom the service provider or the Supplier assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons vary substantially; e.g., a fixed dollar amount payable per month to a service provider for each member of a plan for whom the provider agrees to provide all needed services for a specified period. A capitation fee may include a variable component of up to twenty percent (20%) of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. The term of the contract, including all renewal options, must not exceed five (5) years. The

- contract must be terminable by the Supplier on reasonable notice without penalty or cause, at the end of the third year of the contract;
- (d) All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fee. A per-unit fee is defined to mean a fee based on a unit of service provided as specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the program or the Supplier; e.g., a stated dollar amount for each specified procedure performed, car parked or passenger mile is a per-unit fee. The term of the contract, including all renewal options, must not exceed three (3) years. The contract must be terminable by the Supplier on reasonable notice, without penalty or cause, at the end of the second year of the contract term; or
- (e) All of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start up period, however, compensation may be based on a percentage of gross revenues, adjusted gross revenues, or expenses of a facility. The term of the contract, including renewal options, must not exceed two (2) years. The contract must be terminable by the Supplier on reasonable notice without penalty or cause, at the end of the first year. This type of contract is permissible only with respect to contracts under which the service provider primarily provides services to third parties, and management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (e.g., a contract for general management services for the first year of the operations).

If the compensation terms of a management or service contract are materially revised, the requirements for compensation terms must be retested as of the date of the material revision and the management or service contract is treated as one that was newly entered into as of the date of the material revision.

A renewal option, for purposes of the foregoing, is defined to mean a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one (1) year periods absent cancellation by either party is not a renewal option, even if it is expected to be renewed.

A cancellation penalty is defined to include a limitation on the Supplier's ability to compete with the service provider, a requirement that the Supplier purchase equipment, goods, or services from the service provider, and a requirement that the Supplier pay liquidated damages for cancellation of the contract; in comparison, a requirement effective on cancellation that the Supplier reimburse the service provider for ordinary and necessary expenses or a restriction against the Supplier hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the Supplier, such as a loan or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's length, or that could operate to prevent the Supplier

from terminating the contract (e.g., provisions under which the contract terminates if the management contract is terminated or that places substantial restrictions on the selection of a substitute service provider).

The service provider must not have any role or relationship with the Supplier, that, in effect, substantially limits the Supplier's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

F.13 No Disposition of Financed Property.

The Supplier does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

F.14 Useful Life of Project.

The economic useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement.

F.15 Installment Payments.

Installment Payments generally are expected to be derived from assessments, taxes, fees, charges or other current revenues of the Supplier in each year, and such current revenues are expected to equal or exceed the Installment Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Installment Payments (whether or not deposited to a fund or account established by the Supplier) will be disbursed to pay Installment Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Installment Payments will be depleted once a year except for a reasonable carryover amount not exceeding earnings on such fund or one-twelfth of the Installment Payments in either case for the immediately preceding year.

F.16 No Other Replacement Proceeds.

The Supplier will not use any of the Project Funds to replace or substitute other funds of the Supplier that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

F.17 No Sinking or Pledged Fund.

Except as set forth in Section F.18 below, the Supplier will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Installment Payments,

the Supplier will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

F.18 Reserve Amount.

The State Water Board requires that the Supplier maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount"). The Supplier represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Supplier and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

F.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Supplier is incorporated herein by reference, pursuant to Section F.4.

F.20 Reimbursement Expenditures.

A portion of the Project Funds may be applied to reimburse the Supplier for Project costs paid before the date hereof, so long as the Project cost was (i) not paid prior to sixty (60) days before the Supplier's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the financed facility was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the costs of the Project financed with the Obligation.

F.21 Change in Use of the Project.

The Supplier reasonably expects to use all Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code, the Supplier will use all Project Funds and the Project solely as set forth in the Agreement.

F.22 Rebate Obligations.

If the Supplier satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Supplier fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount or any yield reduction payments calculated by the State Water Board or the Bank.

F.23 No Federal Guarantee.

The Supplier will not directly or indirectly use any of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

F.24 No Notices or Inquiries From IRS.

Within the last 10 years, the Supplier has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Supplier is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

F.25 Amendments.

The provisions in this Exhibit may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

F.26 Application.

The provisions in this Exhibit F shall apply to a Supplier only if any portion of the Project Funds is derived from proceeds of Bonds.

F.27 Reasonable Expectations.

The Supplier warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Article, the expectations of the Supplier as set forth in this Exhibit are reasonable. The Supplier is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Exhibit F.

EXHIBIT G - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

ARTICLE G-1. COMPLIANCE WITH STATE AUTHORITIES

By its signature to this Agreement to which this Exhibit "G" is attached, Supplier agrees to comply with all applicable state and federal laws and authorities, including but not limited to the state authorities listed below; and to the fullest extent required by law, shall require compliance with said authorities by its contractors and subcontractors on the Project.

- Pre-Issuance and Post-Issuance reporting to California Debt and Investment Advisory Commission (CDIAC) as required by Government Code section 8855 subdivisions (i) and (j)
- Public works contractor registration requirements under Labor Code sections 1725.5 and 1771.1
- Volumetric pricing and metering requirements under Water Code section 527
- Urban water demand management requirements under Water Code section 10631.5, subdivision (a)(1)
- The Delta Plan consistency certification required by Water Code section 85225 and California Code of Regulations title 23, section 5002
- Agricultural water management planning requirements of Water Code section 10852
- Wage rate requirements of Labor Code section 1782
- Nondiscrimination in labor contracting requirements of Public Contract Code section 2503
- Monthly diversion reporting requirements of Water Code section 5103, subdivision (e)(2)(A)

ARTICLE G-2. CDIAC PRE-ISSUANCE and POST ISSUANCE REPORTS

Supplier must submit a Pre-Issuance Report to California Debt and Investment Advisory Commission 30 days prior to the issuance of any debt according to the requirements of Government Code section 8855(i). Such a supplier must also submit a Post-Issuance Report to California Debt and Investment Advisory Commission 21 days after to the issuance of any debt according to the requirements of Government Code section 8855(j).

ARTICLE G-3. PUBLIC WORKS CONTRACTOR REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS

To bid for public works contracts, Supplier and Supplier's subcontractors must register with the Department of Industrial Relations as required by Labor Code sections 1725.5 and 1771.1. Pursuant to subdivision (e) of section 1725.5 and subdivision (g) of section 1771.1, the registration requirements apply to any bid proposal submitted on or after March 1, 2015, and any contract entered into on or after April 1, 2015.

ARTICLE G-4. DELTA PLAN CONSISTENCY FINDINGS

If the proposed action is covered by the Delta Plan, Supplier must submit certification of project consistency with the Delta Plan to the Delta Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

ARTICLE G-5. AGRICULTURAL WATER MANAGEMENT PLAN CONSISTENCY

If Supplier is an agricultural water supplier as defined by Water Code section 10608.12, Supplier must comply with Agricultural Water Management Planning requirements as mandated by Water Code section 10852.

ARTICLE G-6. MONTHLY WATER DIVERSION REPORTING (water diverter)

If Supplier is a water diverter, Supplier must maintain compliance with Water Code section 5103, subdivision (e)(2)(A) by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.

EXHIBIT H – SCHEDULE OF MATERIAL OBLIGATIONS

Except for the following and the Obligation evidenced by this Agreement, the Supplier certifies that it has no outstanding Material Obligations and that it is in compliance with all applicable additional debt provisions of the following:

The following outstanding debt is senior to the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
none				

The following outstanding debt is on parity with the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
2009 Installment Sale Agreement securing 2009 COP held by USDA-RUS	2.65%	3,533,000	3,205,563	2049

The following outstanding debt is subordinate to the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
none				

Attachment No. 1

DETAILED COST BREAKDOWN OF THE SELECTED CONSTRUCTION PROJECT

Heber Public Utility District Project No. 1310007-002C

Description	Cost
Site Work	
Grading (includes storm water drainage)	\$304,550
Fencing	\$45,250
Treatment: Coagulation/Rapid mixing	
Tanks: Vault and Slab	\$149,445
Pumps (to include coagulant)	\$20,500
Static mixers	\$40,000
Treatment: Sedimentation	
Basin: Size (raw water wet well)	\$95,210
Pumps (raw water pumps)	\$54,000
Filtration	
Clarifier/Filter treatment unit	\$729,770
Backwash Pump Station	\$37,997
Backwash Decant Water Pump Station	\$93,035
Finish Water Pump Station	\$95,500
Other Treatment	
Baffle in 0.75MG Reservoir	\$150,000
TTHM Removal System for 3 MG Reservoir	\$250,080
Disinfection	
Disinfectant	\$246,328
Chemical feed system	\$47,082
Safety equipment	\$8,000
Retrofit and Seal of Existing Building	\$38,000
Controls	
Controls	\$515,000
Backup generator set	\$220,000
Water Storage	
Tanks: Size (rehad) to prepare for baffle & inlet	\$98,950
Booster pumps	\$392,075

1310007-002C Heber Public Utility District
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Detailed Cost Breakdown

Distribution System

Pipes (water treatment plant piping)	\$1,273,514
water service connections	\$16,948

Miscellaneous

Engineering Design	\$242,850
Administration & Legal	\$15,000
Bidding	\$38,784
Construction Management	\$361,986
Construction Staking	\$30,000
Geotechnical Testing & Observation	\$51,712
Electrical Inspection	\$25,856
Mobilization	\$200,000
Stormwater Pollution Prevention Plans (SWPPP)	\$50,000
Labor Compliance	\$20,000
Construction Contingency	\$258,562

TOTAL \$6,215,984