



**SPECIAL MEETING
of the
STRATEGIC PLANNING COMMITTEE
MONTECITO WATER DISTRICT
583 SAN YSIDRO ROAD, MONTECITO, CALIFORNIA**

**FRIDAY, MARCH 15, 2024
9:30 A.M. – 11:30 A.M.**

Attend in Person or Join by Teleconference:

<https://us06web.zoom.us/j/88664219515?pwd=sFKRgOEnIC9yBUPmcRZIWWvEF1af0K.1>

Meeting ID: 886 6421 9515 Passcode: 980683

Tel: (669) 900 6833

AGENDA

1. CALL TO ORDER, DETERMINATION OF QUORUM

2. PUBLIC FORUM

NOTE: This portion of the agenda may be utilized by any person to address the Committee on any matter within the jurisdiction of the Committee. No consideration or discussion shall be undertaken by Committee members at this time on any item not appearing on this agenda except as permitted by the Ralph M. Brown Act. Discussion items receiving recommendations by the Committee, and/or items requiring action will be placed on the agenda of a future meeting of the Montecito Water District Board of Directors.

3. ITEMS FOR COMMITTEE CONSIDERATION

- * A. Status of potential ASADRA funding for Reservoir Retrofit and Replacement Project
- B. Pure Ocean Project by Seawell LLC
- C. Montecito Indirect Potable Reuse Project
 - i. USBR Watersmart grant and preliminary design and environmental review
 - ii. Modeling of Carpinteria Groundwater Basin
 - iii. Memorandum of Understanding with MSD
- D. Potential opportunity to transfer surplus State Water Project water and/or conveyance capacity for future development in northern Santa Barbara County

4. ITEMS FOR THE NEXT COMMITTEE MEETING

* Indicates attachment included for this item

5. ADJOURNMENT

Note: Montecito Water District conducts its meeting in-person in accordance with the Brown Act and also provides alternative methods of participation which permit members of the public to observe and address public meetings telephonically and/or electronically. These methods of participation can be accessed through the internet link provided at the top of this agenda.

This agenda was posted on the District website, and at the Montecito Water District outside display case at 9:30 a.m. on March 12, 2024. The Americans with Disabilities Act provides that no qualified individual with a disability shall be excluded from participation in, or denied the benefits of, the District's programs, services or activities because of any disability. If you need special assistance to participate in this meeting, please contact the District Office at 805-969-2271. Notification at least twenty-four (24) hours prior to the meeting will enable the District to make appropriate arrangements.

Agendas, agenda packets, and additional materials related to an item on this agenda submitted to the Committee after distribution of the agenda packet are available on the District website.

**MONTECITO WATER DISTRICT
MEMORANDUM**

SECTION: 3-A

DATE: MARCH 15, 2024

TO: STRATEGIC PLANNING COMMITTEE

FROM: ASSISTANT GENERAL MANAGER & GENERAL MANAGER

**SUBJECT: STATUS OF POTENTIAL ASADRA FUNDING FOR RESERVOIR
RETROFIT AND REPLACEMENT PROJECT**

RECOMMENDATION:

Information only.

DISCUSSION:

The California State Water Resources Control Board (SWRCB) facilitates the Drinking Water State Revolving Fund (DWSRF) grant program. Made available by the Environmental Protection Agency (EPA), the DWSRF grant program is offering grants and below-market loans through the Additional Supplemental Appropriations for Disaster Relief Act (ASADRA) funding program. ASADRA funds are available to public agencies for drinking water infrastructure projects resulting from the 2017/18 wildfires (e.g. Thomas Fire) for purposes of mitigating potential impacts from ongoing natural hazards. The District was impacted by the 2017 Thomas Fire and is therefore eligible for this funding opportunity. The program offers 30% grant funding for eligible projects, with the remaining 70% being financed over 30 years at 0% interest.

The Reservoir Retrofit and Replacement Project (Project) involves seismic retrofits, repairs and replacements at eight of the District's nine existing water storage reservoirs including; Doulton, Romero, Terminal, Bella Vista, Park Lane, Cold Springs, Hot Springs and Buena Vista. The District is seeking project funding from the ASADRA program. When completed, the project will bring all eight reservoirs into full compliance with current seismic design codes and regulations.

In February 2021, the Board of Directors authorized staff to pursue the project including a funding application to the SWRCB. In March 2021, the Board of Directors authorized consultant contracts for environmental, engineering and project management services. In August 2021, the Board of Directors authorized amendments to the design and environmental contracts for additional services related to several opportunistic upgrades such as using concrete for reservoir roofs as opposed to steel. The total approved contract amounts for this work was \$1,033,502 of which approximately \$900,000 has been spent to date.

In January 2022, the District completed the engineering design and environmental documentation for the Project, which is required for the ASADRA funding application. All expenses to date are 100% reimbursable following the execution of the funding agreement.

Over the last year, District bond counsel Doug Brown with Stradling Yocca Carlson & Rauth, general counsel, and staff have worked with representatives from the SWRCB to develop the terms of the draft Installment Sale Agreement (Funding Agreement) for the Project, which is provided as Attachment 1 to this memorandum. Provided in Table 1 is an overview of the draft Funding Agreement.

Staff are seeking Committee feedback on the draft Funding Agreement. The SWRCB has indicated the Funding Agreement will be ready for District approval around August 2024. If the Board of Directors continues to be supportive of pursuing the Project and the ASADRA funding, direction is needed concerning whether to include the projected Project expenses (limited to a cash flow impact) in the 5-year Cost of Service and Rate Study and the Fiscal Year (FY) 2025 budget. If pursued, construction could begin in early to mid-2025 following a competitive bid process. All expenses are 100% reimbursable by the state with no District payments until one year after construction is completed.

Table 1 – Summary of Key Terms for the ASADRA Agreement

Term	Details
Scope of Work	Seismic retrofit or replacement of eight (8) existing buried and above ground concrete and steel potable water storage reservoirs. All work to be completed per 2022 100% design plans and specifications prepared by Tetra Tech
Eligible Costs	\$35.3M total future cost (\$24.5M present day cost) Assumes 2023 inflation of 11% and 6% annual inflation thereafter Cost includes: <ul style="list-style-type: none"> • \$32.3M construction (including 15% contingency) • \$1.3M Construction Management • \$1.2M Planning costs (\$900k spent to date by District) • \$500k Environmental Monitoring
Schedule	5 months for Funding Agreement (August 2024) 3 months for bidding/award of construction contracts (Sept to Dec 2024) Approx. 6 Years for construction Construction to begin in early to mid-2025 (subject to Funding Agreement and bidding) Construction completion estimated to be end of 2030
Loan Forgiveness	30% of the total project cost to be forgiven (estimated to be \$10.6M)
Loan	30-year loan at 0% interest 70% of project costs (estimated to be \$24.7M) First payment due 12 months after project completion (estimated to be 2031)
Cost Increases	Are eligible and would require an amendment to the Funding Agreement
Reimbursement	All costs fully reimbursable during construction.

	Any costs incurred prior to Funding Agreement are eligible and can be reimbursed once Funding Agreement is in place (\$900k spent to date) Requests can be submitted by MWD to SWRCB as often as desired (likely monthly) Reimbursement to occur approx. 90 days after submittal to SWRCB
Reporting Requirements	Quarterly progress reports to SWRCB Progress reports accompanying all reimbursement requests
Debt Coverage	125% of Maximum Annual Debt Service (MADS) for senior debt 100% of Maximum Annual Debt Service (MADS) for all debt (parity and subordinate)
Senior Debt	Not allowed under agreement No CCWA future debt without amendment to County/CCWA/MWD agreement
Reserve Fund	Equal to one year's Debt Service under agreement Established prior to completion of construction

ATTACHMENTS:

1. Draft Funding Agreement between the District and the California State Water Resources Control Board for the ASADRA funded Project.

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DRAFT DATED: 2/28/2024



**DRINKING WATER
ADDITIONAL SUPPLEMENTAL APPROPRIATIONS FOR DISASTER RELIEF (ASADRA)**

MONTECITO WATER DISTRICT

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION
INSTALLMENT SALE AGREEMENT

PROJECT NO. 4210007-001C
MONTECITO WATER RESILIENCE PROJECT

AGREEMENT NO. []

PROJECT FUNDING AMOUNT: \$
PRINCIPAL FORGIVENESS COMPONENT: \$
ESTIMATED REASONABLE PROJECT COST: \$

ELIGIBLE WORK START DATE: _____
ELIGIBLE CONSTRUCTION START DATE: _____

COMPLETION OF CONSTRUCTION DATE: _____
FINAL REIMBURSEMENT REQUEST DATE: _____
FINAL PAYMENT DATE: _____
RECORDS RETENTION END DATE: _____

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AGREEMENT

1. AUTHORITY.

- (a) The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to Section 116760 et seq. of the Health and Safety Code, and Resolution Nos. 2019-0065 and 2022-0041.
- (b) The Recipient is authorized to enter into this Installment Sale Agreement Agreement (Agreement) pursuant to Resolution No. _____.

2. INTENTION.

- (a) The Recipient desires to receive financial assistance for and undertake work required for the drinking water construction Project according to the terms and conditions set forth in this Agreement.
- (b) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement, with the expectation that the Recipient shall repay a portion of the financial assistance to the State Water Board.
- (c) The Recipient intends to evidence its obligation to submit Payments to the State Water Board and secure its obligation with Net Revenues of its water enterprise, as set forth in Exhibit B, according to the terms and conditions set forth in this Agreement.

3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

In consideration of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement.

- (a) The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board.
- (b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following:
- i. The Recipient must deliver to the Division a resolution authorizing this Agreement.
 - ii. The Recipient must deliver an opinion of bond counsel and general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.

(c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Final Payment Date.

(d) This Agreement includes the following exhibits and attachments thereto:

- i. EXHIBIT A – SCOPE OF WORK
- ii. EXHIBIT B – FUNDING TERMS

- iii. EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS
- iv. EXHIBIT D – SPECIAL CONDITIONS
- v. EXHIBIT E – PAYMENT SCHEDULE

(e) This Agreement includes the following documents incorporated by reference, as well as any documents incorporated by reference in Exhibit D:

- i. the Final Plans & Specifications, dated _____, which are the basis for the construction contract to be awarded by the Recipient;
- ii. the Drinking Water System Permit No. _____, and any amendments thereto; the Davis-Bacon requirements found at:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/2022/2022-2-dwsrf-governmental-entities-public.pdf
- iii.

(f) This Agreement, and any amendments hereto, may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement, and any amendments hereto, either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.

4. PARTY CONTACTS

State Water Board		Montecito Water District	
Section:	Division of Financial Assistance		
Name:	xxxx, Project Manager	Name:	Title
Address:	1001 I Street, Floor	Address:	
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	
Phone:	(916)	Phone:	
Fax:	(916)	Fax:	
Email:	[PMemail]@waterboards.ca.gov [programemail@waterboards.ca.gov]	Email:	

The Recipient may change its contact upon written notice to the Division, which notice shall be accompanied by authorization from the Recipient's Authorized Representative. The State Water Board will notify the Recipient of any changes to its contact.

While the foregoing are contacts for day-to-day communications regarding Project work, the Recipient shall provide official communications and events of Notice as set forth in Exhibit C to the Division's Deputy Director.

5. DEFINITIONS.

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

"Additional Payments" means the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Agreement" means this agreement, including all exhibits and attachments hereto.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

"Cachuma Water Supply Agreement" means the Contract for the Furnishing of Water to Montecito County Water District, dated September 12, 1949, by and between the Santa Barbara County Water Agency and the District, as originally executed and as renewed and amended by the Renewal Master Contract on March 12, 1996, and as both may from time to time be amended or supplemented in accordance therewith.

"Charge In Lieu of Interest" means any fee or charge in lieu of some or all of, but not to exceed, the interest that would otherwise be owed under this Agreement, as set forth in Exhibit E.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is identified in Exhibit A of this Agreement.

"Cover Page" means the front page of this Agreement.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, as of any date, with respect to outstanding System Obligations and, in the case of the additional debt tests in Exhibit B of this Agreement, any System Obligations that are proposed to be outstanding, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), together with any Charge In Lieu of Interest on this Obligation or other System Obligations to the State Water Board, calculated with the following assumptions:

- a. Principal payments (unless a different subdivision of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;
- b. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the SIFMA Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;
- c. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of SOFR, or its successor index, during the 24 months preceding the date of such calculation;
- d. Interest on a variable rate System Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;
- e. Interest on a fixed rate System Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subdivisions (b) or (c) of this definition of Debt Service;

f. Payments of principal and interest on a System Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the defeasance of such System Obligations;

g. If 25% or more of the principal of a System Obligation is not due until its final stated maturity, then principal and interest on that System Obligation may be projected to amortize over the lesser of 30 years or the Useful Life of the financed asset, and interest may be calculated according to subdivisions (b)-(e) of this definition of Debt Service, as appropriate.

"Deputy Director" means the Deputy Director of the Division.

"District Office" means District Office of the Division of Drinking Water of the State Water Board.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.

"Division of Drinking Water" means the Division of Drinking Water of the State Water Board.

"Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

"Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Event of Default" means the occurrence of any of the following events:

- a) Failure by the Recipient to make any payment required to be paid pursuant to this Agreement, including Payments;
- b) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- c) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
- d) Failure by the Recipient to comply with the additional debt test or reserve fund requirement, if any, in Exhibit B or Exhibit D of this Agreement;
- e) Failure to operate the System or the Project without the Division's approval;
- f) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- g) The occurrence of a material breach or event of default under any System Obligation or Material Obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- h) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient's entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient's existence, or any action in furtherance of any of the foregoing;

- i) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or
- j) Loss of the Recipient's rights, licenses, permits, or privileges necessary for the operation of the System or the Project, or the occurrence of any material restraint on the Recipient's enterprise by a government agency or court order.
- k) The occurrence of a material breach or event of default under any Material Obligation.

"Final Payment Date" is the date by which all principal and accrued interest due under this Agreement is to be paid in full to the State Water Board and is specified on the Cover Page of this Agreement.

"Final Reimbursement Request Date" means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

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

"Force Account" means the use of the Recipient's own employees, equipment, or resources for the Project.

"GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported with respect to such System Obligation pursuant to Rule 15c2-12(b)(5).

"Material Obligation" means an obligation of the Recipient that is material to this transaction, including System Obligations.

"Maximum Annual Debt Service" means the maximum amount of Debt Service due on System Obligations in a Fiscal Year during the period commencing with the Fiscal Year for which such calculation is made and within the next five years in which Debt Service for any System Obligations will become due.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Payments (including 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 in the Project Description in Exhibit A and Exhibit B and in the documents thereby incorporated by reference.

“Operations and Maintenance Costs” means the (1) reasonable and necessary costs spent or incurred for maintenance and operation of the System, calculated in accordance with GAAP, including (among other things) the expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors accountants, attorneys or engineers and insurance premiums; (2) all other reasonable and necessary costs of the Recipient or charges (other than Debt Service) required to be paid by it to comply with the terms of any System Obligation; (3) all costs (other than Debt Service) paid by the Recipient under the Water Supply Agreement with the Central Coast Water Authority; (4) all costs (other than Debt Service) paid by the Recipient under the Cachuma Water Supply Agreement; (5) all costs (other than Debt Service) paid by the Recipient under the Water Supply Agreement with the City of Santa Barbara; and (6) all costs (other than Debt Service payable under an agreement for the purchase or acquisition of water (i) where the water supply partner may construct certain capital facilities or infrastructure specified in such agreement and (ii) under which the Recipient is obligated to pay debt service on debt incurred by the water supply partner relating to such capital facilities or infrastructure of the water supply partner) of water purchased or otherwise acquired by the System, but excluding in all cases: (a) depreciation, replacement and obsolescence charges or reserves therefor; (b) amortization of intangibles or other bookkeeping entries of a similar nature; (c) costs of capital additions, replacements, betterments, extensions or improvements to the System which under GAAP are chargeable to a capital account or to a reserve for depreciation; and (d) charges for the payment of System Obligations. For the avoidance of doubt, any payment stemming from an obligation of the Recipient to pay principal and interest or equivalent for the capital costs of a water supply partner in connection with the purchase or other acquisition of water pursuant to an agreement with such water supply partner (i) where the water supply partner may construct certain capital facilities or infrastructure specified in such agreement and (ii) under which the Recipient is obligated to pay debt service on debt incurred by the water supply partner relating to such capital facilities or infrastructure of the water supply partner is excluded from this definition and shall be treated as Debt Service, and any such obligation to make such payments shall be considered a System Obligation.

“Parity Obligation” means a debt obligation of the Recipient on parity with this Obligation. The Recipient's Parity Obligations are these:

- The Indenture of Trust, dated as of August 1, 2020, by and between the Montecito Water District and The Bank of New York Mellon Trust Company, N.A., as trustee.
- The Cater Water Filtration Plant Improvements Financing Agreement, dated March 18, 2002, between the Recipient and the City of Santa Barbara.
- The Cater Water Filtration Plant Improvements Contribution Agreement, dated June 28, 2011, between the Recipient and the City of Santa Barbara.

“Payment” means any payment due to the State Water Board from the Recipient pursuant to this Agreement.

“Policy” means the State Water Board's “Policy for Implementing the Drinking Water State Revolving Fund,” as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

“Project” means the Project financed by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, and may include capitalized interest.

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.

"Recipient" means the Montecito Water District.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records and is set forth on the Cover Page of this Agreement.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"Reserve Fund" means the reserve fund required pursuant to Exhibit B of this Agreement.

"Revenues" means, for each Fiscal Year, all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the System, calculated in accordance with GAAP, including, without limiting the generality of the foregoing:

- (1) All income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of the water or other services, facilities, and commodities sold, furnished or supplied through the facilities of the System including standby and availability charges and development fees allocable to the System; plus
- (2) except as set forth in (z) below, taxes or assessments, if any, the imposition of which is permitted by law; plus
- (3) the earnings on and income derived from the investment of the amounts described in clauses (1) and (2) above and the general unrestricted funds of the Recipient; plus
- (4) deposits to the Enterprise Fund from amounts on deposit in the Rate Stabilization Fund; but less
- (5) any Revenues transferred from the Enterprise Fund to the Rate Stabilization Fund ;

but excluding in all cases:

- (y) customers' deposits or any other deposits subject to refund, until such deposits have become the property of the Recipient; and
- (z) reserves, taxes or assessments specifically pledged to the payment of debt service with respect to notes, bonds or other obligations of the Recipient and which reserves, taxes or assessments are not available for any other purpose of the Recipient.

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

“Senior Obligation” means a debt obligation of the Recipient that is senior to this Obligation. There are no Senior Obligations.

“SRF” means the Drinking Water State Revolving Fund.

“State” means State of California.

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

“Subordinate Obligation” means a debt obligation of the Recipient that is subordinate to this Obligation. There are no Subordinate Obligations.

“System” means all properties and assets, real and personal, tangible and intangible, of the Recipient now or hereafter existing, used or pertaining to the acquisition, treatment, reclamation, transmission, distribution and sale of water, including all additions, extensions, expansions, improvements and betterments thereto.

“System Obligation” means any obligation of the Recipient payable from the Revenues, including but not limited to this Obligation, any Parity Obligation, any Subordinate Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

“Useful Life” means the economically useful life of the Project beginning at Completion of Construction and is set forth in Exhibit A.

“Year” means calendar year unless otherwise expressly indicated.

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

MONTECITO WATER DISTRICT:

By: _____
Name: [Officer]
Title: [Title1]

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: [Officer]
Title: Deputy Director
Division of Financial Assistance

Date: _____

EXHIBIT A – SCOPE OF WORK

A.1. PROJECT DESCRIPTION, USEFUL LIFE, AND SCOPE OF WORK.

(a) The Project is the project set forth on the Cover Page of this Agreement.

(b) The Useful Life of this Project is at least _____ years.

(c) Scope of Work.

[to be inserted by DFA]

A.2. STANDARD PROJECT REQUIREMENTS.

A.2.1 Acknowledgements.

The Recipient shall include the following acknowledgement 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.

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 contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

A.2.2 Reports

A.2.2.1 Progress Reports.

(a) The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement.

(b) The Recipient must provide a progress report with each reimbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B.

(c) A progress report must contain the following information:

- i. 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;
- ii. A description of compliance with environmental requirements;
- iii. A listing of change orders including amount, description of work, and change in contract amount and schedule; and

- iv. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.2.2.2 Project Completion Report.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient 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.

A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

A.2.2.4 DBE Reports for SRF Projects.

The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

A.2.3 Signage.

The Recipient 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 must include the following disclosure statement and color logos (available from the Division):

- a. The sign shall include the following logos:



b. The sign shall include the following statement:

"Funding for this \$xx million [name of project] 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."

c. The Project sign may include another agency's required promotional information so long as the above requirements are satisfied. The sign shall be prepared in a professional manner.

A.2.4 Commencement of Operations.

Upon Completion of Construction of the Project, the Recipient must expeditiously initiate Project operations.

A.3 DATES & DELIVERABLES.

(a) Time is of the essence.

(b) The Recipient must expeditiously proceed with and complete construction of the Project.

(c) The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Construction Start Date
- iii. Completion of Construction Date
- iv. Final Reimbursement Request Date
- v. Records Retention End Date
- vi. Final Payment Date

(d) The Recipient must award the prime construction contract timely.

(e) The Recipient agrees to start construction no later than [DFA will insert date that is within 6 months after execution of this Agreement].

(f) The Recipient must deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.

(g) The undisbursed balance of this Agreement will be deobligated if the Recipient does not provide its final reimbursement request to the Division on or before the Final Reimbursement Request Date.

(h) Upon request by the Division, the Recipient shall submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the "Estimated Due Date" column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to Project Completion. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address

comments prior to submitting the final submittal. The Recipient must submit the final reimbursement request prior to the Final Reimbursement Request Date set forth on the Cover Page.

[DFA will insert Schedule of Deliverables]

DRAFT

EXHIBIT B – FUNDING TERMS

B.1. FUNDING AMOUNTS AND REIMBURSEMENTS

B.1.1 Funding Contingency and Other Sources.

(a) If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount.

(b) If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board to be applied to Payments due hereunder, if any.

B.1.2 Estimated Reasonable Cost.

The estimated reasonable cost of the total Project, including associated planning and design costs is Written Dollar Amount dollars and no cents (\$Dollar Amount).

B.1.3 Project Funding Amount.

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.1.4 Principal Forgiveness Component.

(a) Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board will forgive principal of not to exceed the amount of the Principal Forgiveness Component set forth on the Cover Page of this Agreement.

(b) Upon Completion of Construction, the State Water Board will prepare an alternate payment schedule reflecting this forgiveness.

B. 1.5 Budget Costs.

(a) Estimated budget costs are contained in the Summary Project Cost Table below:

[DFA will insert table]

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment.

The sum of adjusted line items in both the Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(b) Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.1.6 Contingent Disbursement.

(a) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

(c) Construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient.

(d) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.

(e) Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

(f) Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.

(g) The Recipient agrees to ensure that its final reimbursement request is received by the Division no later than the Final Reimbursement Request Date. If the final reimbursement request is not received timely, the undisbursed balance of this Agreement will be deobligated.

(h) The Recipient is not entitled to interest earned on undisbursed funds.

B.1.7 Reimbursement Procedure.

Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

- (a) Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred planning and design allowance costs through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed. To be eligible for reimbursement, Project Costs, including any planning and design allowance costs, must have been incurred in compliance with all applicable requirements, including the state and federal cross-cutting requirements listed in Exhibit C.

- (b) The Recipient must submit a reimbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late reimbursement requests may not be honored.
- (c) The Recipient may request reimbursement of eligible construction and equipment costs consistent with budget amounts approved by the Division in the Final Budget Approval.
- (d) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of reimbursement request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.
- (e) The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of reimbursement request. Supporting documentation (e.g., receipts) must be submitted with each reimbursement request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed reimbursement request. Reimbursement requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
- (f) The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future disbursements.
- (g) The Recipient shall not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
- (h) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (i) No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. as of the date costs are incurred by the Recipient.

B.1.8 Withholding of Disbursements.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- (a) The Recipient's failure to maintain reasonable progress on the Project as determined by the Division;
- (b) Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or payment of debt service on System Obligations;
- (c) Commencement of litigation or a judicial or administrative proceeding related to the Project, System, or Revenues that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;

- (d) Any investigation by the State Water Board, District Attorney, California State Auditor, Bureau of State Audits, the United States Environmental Protection Agency's (USEPA) Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) A material adverse change in the condition of the Recipient, the Revenues, or the System, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
- (f) The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
- (g) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents regarding the Project or the System;
- (h) An event requiring Notice as set forth in Exhibit C;
- (i) An Event of Default or an event that the Division determines may become an Event of Default.

B.1.9 Fraud and Misuse of Public Funds; Enforcement.

All requests for reimbursement submitted must be accurate and signed by the Recipient's Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the repayment of all Project Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit; refer the matter for appropriate administrative action, including but not limited to the recovery of financial assistance provided and the imposition of civil penalties; and/or refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in any submittal may be subject to a civil penalty, criminal fine, or imprisonment. (Wat. Code, § 13490 et seq.)

B.2 RECIPIENT'S PAYMENT OBLIGATION, PLEDGE, AND RESERVE

B.2.1 Project Costs.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs and Additional Payments. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

B.2.2 Estimated Principal Payment Due.

The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is **Written Dollar Amount dollars and no cents (\$Dollar Amount).**

B.2.3 Interest Rate and In-Lieu of Interest Charges.

(a) The Recipient agrees to make all Payments according to the schedule in Exhibit E, and as otherwise set forth herein, at an interest rate of Written Interest Rate % (X%) per annum.

(b) Interest will accrue beginning with each disbursement.

(c) In lieu of, and not to exceed, interest otherwise due under this Agreement, the Recipient agrees to pay the following charge(s), as further set forth in Exhibit E:

- an Administrative Service Charge
- a Drinking Water Small Community Emergency Grant Fund Charge

B.2.4 Reserved.

B.2.5 Obligation Absolute.

The obligation of the Recipient to make the Payments and other payments required to be made by it under this Agreement, from the Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Payments and Additional Payments have been paid in full, the Recipient must not discontinue or suspend any Payments or other payments required to be made by it hereunder when due, whether or not the Project, or any related part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

B.2.6 Payment Timing.

(a) The Recipient must pay interest annually, by [DFA to fill in date] of each year, until one year after Completion of Construction. Beginning no later than one year after Completion of Construction, the Recipient must make annual Payment of the principal of the Project Funds, together with all interest accruing thereon by [DFA to fill in date]. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Payment Date. Payments are based on a standard fully amortized assistance amount with equal annual payments.

(b) The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, plus any Charge In Lieu of Interest, less the Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit E is a payment schedule based on the provisions of this Exhibit and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

(c) Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient. The Recipient must make each 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 by 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 related costs. 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 account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

(d) The Recipient is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient must provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

(e) Each Payment must be paid in lawful money of the United States of America by check or other acceptable form of payment set forth at www.waterboards.ca.gov/make_a_payment. The Recipient must pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor.

B.2.7 Pledged Revenues.

B.2.7.1 Establishment of Enterprise Fund and Reserve Fund.

In order to carry out its System Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in this Exhibit, the Recipient must establish and maintain a Reserve Fund.

B.2.7.2 Pledge of Net Revenues, Enterprise Fund, and Reserve Fund.

The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund on parity with the Parity Obligations. The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund to secure the Obligation, including payment of Payments and Additional Payments hereunder. The Enterprise Fund, Net Revenues in the Enterprise Fund, and any Reserve 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 Recipient.

B.2.7.3 Application and Purpose of the Enterprise Fund.

Subject to the provisions of any outstanding System Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the System Obligations in order of priority. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient.

B.2.8 Prepayment (ASADRA).

Notwithstanding anything to the contrary in the State Water Board's Debt Management Policy, adopted on October 3, 2017, in accordance with the Additional Supplemental Appropriations for Disaster Relief, 2019 (ASADRA) Revised Supplemental Intended Use Plan in effect as of the execution date of this Agreement, the Recipient may prepay any portion of the principal and interest due under this Agreement, at any time, without the written consent of the Deputy Director of the Division.

B.2.9 Reserve Fund.

Prior to Completion of Construction, the Recipient must establish a restricted Reserve Fund, held in its Enterprise Fund, equal to one year's Debt Service on this Obligation. The Recipient must maintain the Reserve Fund throughout the term of this Agreement. The Reserve Fund is subject to lien and pledged as security for this Obligation, and its use is restricted to payment of this Obligation during the term of this Agreement.

B.3 RATES, FEES AND CHARGES.

(a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are equal to the sum of (i) at least 125% of the Maximum Annual Debt Service with respect to all outstanding System Obligations senior to and on parity with the Obligation and (ii) at least 100% of the Maximum Annual Debt Service with respect to all outstanding System Obligations subordinate to the Obligation, so long as System Obligations other than this Obligation are outstanding. Upon defeasance of all System Obligations other than this Obligation, this ratio must be at least 125%, except where System Obligations are defeased pursuant to refunding obligations.

(b) The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

(c) Upon consideration of a voter initiative to reduce Revenues, the Recipient must make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in this Section. The Recipient must make its findings available to the public. The Recipient's Authorized Representative must request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in this Agreement and its obligation to operate and maintain the Project for its Useful Life. The Recipient must diligently pursue and bear any and all costs related to such challenge. The Recipient must notify and regularly update the State Water Board regarding the status of any such challenge.

B.4 ADDITIONAL DEBT.

(a) The Recipient's future debt that is secured by Revenues pledged herein may not be senior to this Obligation.

(b) The Recipient may issue additional parity or subordinate debt only if all of the following conditions are met:

- i. No Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing;
- ii. Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the ratio for rate covenants set forth in this Exhibit with respect to any outstanding and proposed additional obligations;
- iii. The Recipient is in compliance with any reserve fund requirement of this Obligation.

B.5 NO LIENS.

The Recipient must not make any pledge of or place any lien on the Project, System, or Revenues except as otherwise provided or permitted by this Agreement.

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EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS

C.1 REPRESENTATIONS & WARRANTIES.

The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement.

C.1.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

C.1.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

C.1.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date of execution of this Agreement by the Recipient, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date of execution of this Agreement by the Recipient.

C.1.4 No Litigation.

There are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain the System or any of the real or personal property related to or necessary for the Project.

C.1.5 Property Rights and Water Rights.

The Recipient owns or has sufficient property rights in the Project property for the longer of the Useful Life or the term of this Agreement, either in fee simple or for a term of years that is not subject to third-party revocation during the Useful Life of the Project.

The Recipient possesses all water rights necessary for this Project.

C.1.6 Solvency and Insurance.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.

C.1.7 Legal Status and Eligibility.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.

C.1.9 System Obligations

The Recipient has no System Obligations other than those defined in this Agreement.

C.1.10 No Other Material Debt.

The Recipient has no Material Obligations other than System Obligations except as set forth in this paragraph:

- The Water Supply Agreement, dated September 2, 2020, between the Recipient and the City of Santa Barbara, as may be amended from time to time.

C.1.11 Compliance with State Water Board Funding Agreements.

The Recipient represents that it is in compliance with all State Water Board funding agreements to which it is a party.

C.2 DEFAULTS AND REMEDIES

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement.

C.2.1 Return of Funds; Acceleration; and Additional Payments.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, immediately to do each of the following:

- i. return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- ii. accelerate the payment of any principal owed under this Agreement, all of which shall be immediately due and payable;
- iii. pay interest at the highest legal rate on all of the foregoing; and
- iv. pay any Additional Payments.

C.2.2 Reserved.

C.2.3 Administrative remedies.

Whenever the State Water Board determines that the Recipient, the Recipient's contractor, consultant, employee, agent, assignee, or grantee has violated any requirement or term of the Agreement, the State Water Board may impose civil penalties in accordance with Water Code, section 13497. The State Water Board may impose civil liability administratively against the Recipient or the Recipient's consultant or contractor or other agent furnishing any information related to funds disbursed or costs claimed for reimbursement if the Recipient or the Recipient's consultant or contractor or other agent fails to personally attest that the information is true, accurate, and complete to the best of one's knowledge. (Wat. Code, § 13498.) The State Water Board may impose civil liability administratively against any person who makes a misrepresentation in any submittal to the State Water Board, including, but not limited to, an application, report, certification, record, invoice, form, or other document that is submitted to the State Water Board relating to a financial assistance agreement. (Wat. Code, § 13499.)

C.2.4 Judicial remedies.

Whenever the State Water Board determines that an Event of Default shall have occurred, the State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. Without limiting the generality of the foregoing, the State Water Board may:

- i. by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- ii. by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement, including but not limited to the imposition and collection of rates for the services of the System sufficient to meet all requirements of this Agreement; and
- iii. take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.

C.2.5 Termination.

Upon an Event of Default, the State Water Board may terminate this Agreement. Interest shall accrue on all amounts due at the highest legal rate of interest from the date that the State Water Board delivers notice of termination to the Recipient.

C.2.6 Damages for Breach of Tax-Exempt Status.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results 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 Recipient must 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.

C.2.7 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must 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.

C.2.8 Remedies and Limitations.

None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy.

Any claim of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the claims procedures provided to the Recipient under this Agreement.

C.2.9 Non-Waiver.

Nothing in this Agreement shall affect or impair the Recipient's Obligation to pay Payments as provided herein or shall affect or impair the right of the State Water Board to bring suit to enforce such payment. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement.

C.2.10 Status Quo.

If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights and remedies as if no such action had been brought.

C.3 STANDARD CONDITIONS

C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure that the State Water Board, the Governor of the State, the USEPA, the USEPA's Office of Inspector General, any member of Congress, 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 Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, reimbursement requests, and supporting documentation submitted hereunder.

C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention.

(a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

(b) The Recipient must comply with federal standards for financial management systems. The Recipient 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 Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

(c) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- i. Establish an official file for the Project which adequately documents all significant actions relative to the Project;
- ii. Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- iii. Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- iv. Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
- v. Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- vi. If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.

(d) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the California State Auditor, the Bureau of State Audits, the USEPA, the USEPA's Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and

records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

C.3.3 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

Requests for amendments must be in writing and directed to the contact listed in Section 4 and to the Division's Chief of Loans and Grants Administration Section.

C.3.4 Assignability.

This Agreement is not assignable by the Recipient, 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.

C.3.5 Audit.

(a) The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of state or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division.

(b) Audit disallowances must be returned to the State Water Board.

C.3.6 Bonding.

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

C.3.7 Competitive Bidding

Recipient must adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

C.3.8 Compliance with Applicable Laws, Rules, and Requirements.

The Recipient must, 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, to the extent applicable, the Recipient must:

(a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;

(b) Comply with the Policy; and

(c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

C.3.9 Computer Software.

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

C.3.10 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

C.3.11 Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

C.3.12 Data Management.

The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

C.3.13 Disputes.

(a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient 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.

(b) 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.

(c) Recipient must continue with the responsibilities under this Agreement during any dispute.

(d) This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

C.3.14 Reserved.

C.3.15 Environmental Clearance.

(a) No work that is subject to CEQA or NEPA may proceed under this Agreement unless the State Water Board has provided environmental clearance. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional

mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement.

(b) If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

C.3.16 Governing Law.

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

C.3.17 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

C.3.18 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, 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 the Project; 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 Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient 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 survive the term of this Agreement.

C.3.19 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

C.3.20 Integration.

This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

C.3.21 Leveraging Covenants.

- (a) The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5).
- (b) The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure documents or reports that are disclosed pursuant to (i) the Recipient's continuing disclosure undertaking or undertakings made in connection with any outstanding System Obligation, (ii) the terms of any outstanding System Obligation, or (iii) a voluntary disclosure of information related to an outstanding System Obligation. The Recipient must disclose such documents or reports to the State Water Board at the same time such documents or reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

C.3.22 No Discrimination.

- (a) The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.
- (b) If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.
- (c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- (d) The Recipient's obligations under this section shall survive the term of this Agreement.
- (e) During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital

status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

(f) The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(g) The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(h) The Recipient, its contractors, and subcontractors must comply with all applicable federal civil rights regulations, including statutory and national policy requirements. (2 CFR § 200.300). This includes, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech. (Executive Order 13798).

(i) The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(j) The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C.3.23 No Third Party Rights.

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

C.3.24 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.

C.3.25 Notice.

Upon the occurrence of any of the following events, the Recipient must provide notice as set forth below.

- (a) Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to [PM email address and senior email address] and DrinkingWaterSRF@waterboards.ca.gov:
 - i. The seizure of, or levy on, any Revenues securing this Agreement;
 - ii. Any discovery of any potential tribal cultural resource and/or archaeological or historical resource (also notify the Division's Senior Cultural Resources Officer, Lisa.Machado@waterboards.ca.gov or (916) 323-0626). Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.

- (b) Within five (5) business days, the Recipient must notify the Division by phone at (916) 327-9978; by email to Lance.Reese@waterboards.ca.gov [PM email address and senior email address] and DrinkingWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth in Section 4 of this Agreement of the occurrence of any of the following events:
- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project or the System or change of management or service contracts, if any, for operation of the System;
 - iii. Loss, theft, damage, or impairment to Project, the Revenues or the System;
 - iv. Failure to meet any debt service coverage test in Exhibit B of this Agreement;
 - v. Draws on the Reserve Fund;
 - vi. Listed Events and Events of Default, except as otherwise set forth in this section;
 - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
 - viii. An offer from a public entity to purchase the Project or the System or any portion thereof, or any of the real or personal property related to or necessary for the Project;
 - ix. A proceeding or action by a public entity to acquire the Project or the System by power of eminent domain;
 - x. Incurrence of a System Obligation or other Material Obligation by the Recipient; or
 - xi. A default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a System Obligation or other Material Obligation of the Recipient, any of which reflect financial difficulties.
- (c) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to [PM email address and senior email address] and DrinkingWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of the following events:
- i. Material defaults on Material Obligations, other than this Obligation;
 - ii. Unscheduled draws on material debt service reserves or credit enhancements, reflecting financial difficulties;
 - iii. Substitution of credit or liquidity providers, if any or their failure to perform;
 - iv. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence, or any judgment or court order relating to such litigation that has a significant effect on the Project or the System;
 - v. Circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System;
 - vi. Consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
 - vii. Rating changes on outstanding System Obligations, if any;
 - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board; or
 - ix. Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, USEPA's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;

(d) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to [PM email address and senior email address] and DrinkingWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of any of the following events:

- i. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- ii. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
- iii. 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;
- iv. 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;
- v. 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 Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- vi. Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
- vii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division. The Recipient is encouraged to notify the EPA project officer ;
- viii. Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, as required by Exhibit C.4.3(xxvii);
- ix. Any events requiring notice to the Division pursuant to the provisions of this Agreement;
- x. Completion of Construction of the Project, and actual Project Completion;
- xi. The award of the prime construction contract for the Project;
- xii. Initiation of construction of the Project.

C.3.26 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during the Useful Life of the Project in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System 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 System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund 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.

In the event of any damage to or destruction of the System 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 System. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System must be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient must provide additional funds to restore or replace the damaged portions of the System.

Recipient agrees that for any policy of insurance concerning or covering 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 must provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

C.3.27 Permits, Subcontracting, and Remedies.

Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml

C.3.28 Professionals.

The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

C.3.29 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

In addition, the Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in Section 3 of this Agreement.

C.3.30 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

C.3.31 Recipient's Responsibility for Work.

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

C.3.32 Related Litigation.

Under no circumstances may the Recipient use funds from any reimbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

C.3.33 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

C.3.34 State Water Board Action; Costs and Attorney Fees.

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 breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

C.3.35 Timeliness.

Time is of the essence in this Agreement.

C.3.36 Unenforceable Provision.

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

C.3.37 Venue.

Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

C.3.38 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

C.4.1 Reserved.

C.4.2 State Cross-Cutters.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following with respect to all Project Costs for the term of this Agreement:

- i. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- ii. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- iii. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- iv. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- v. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- vi. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- vii. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- viii. Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- ix. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.

- x. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
- xi. The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
- xii. Regulations in Division 4 of Title 22 of the California Code of Regulations, including but not limited to California Waterworks Standards in Chapter 16, and Lead and Copper regulations in Chapter 17.5.

C.4.3 Federal Requirements and Cross-Cutters for SRF Funding.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions with Respect to all Project Costs for the term of this Agreement and for the Useful Life of the Project:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient 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. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient acknowledges that funds received under this Agreement are subject to the Build America Buy America (BABA) requirements of Public Law 117-58 (the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), signed into law on November 15, 2021), which are in addition to "iron and steel products" requirements described in section C.4.3 (i) above. Specifically, unless (1) the Recipient has requested and obtained a waiver from USEPA on file with the State Water Board pertaining to the Project or the Project is otherwise covered by a general applicability waiver, as confirmed in writing by the State Water Board; or (2) the State Water Board and, to the extent the Project is co-funded by any other agency using federal funds subject to BABA requirements, each such agency, has advised the Recipient in writing that the BABA requirements are not applicable to the Project, the Recipient shall ensure and certifies that, as these terms are defined within and made applicable by Public Law 117-58:
 - (a) all iron and steel used in the Project are produced in the United States;
 - (b) the manufactured products used in the Project are produced in the United States; and
 - (c) the construction materials used in the Project are produced in the United States.

The Recipient must comply and require its contractors and subcontractors to comply with all applicable BABA requirements and reporting and must inform the State Water Board immediately of any information regarding a violation of the foregoing.

Based on representations made by the Recipient and corresponding evidence on file with the State Water Board, the Project qualifies for the "Adjustment Period Waiver of Section 70914(a) of

P.L. 117-58, Build America, Buy America Act, 2021 for SRF Projects that have Initiated Design Planning”, found at [EPA - SRF - Final Waiver - Adjustment Period September 2022 - Signed.pdf](#). This waiver applies to projects that have initiated project design planning prior to May 14, 2022, the statutory effective date of the BABA requirements, and permits the use of non-domestic manufactured products and construction materials that would otherwise be prohibited under the BABA requirements. This program waiver does not waive the iron and steel requirements under BABA. Sections 70917(a) and (b) of BIL provide a savings provision for existing statutory requirements that meet or exceed BABA requirements, such as the “iron and steel products” requirements applicable to SRF funded projects referenced in section C.4.3 (i) above, which will continue to apply as part of BABA requirements.

- iii. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.
- iv. The Recipient must comply with the signage requirements set forth in Exhibit A.
- v. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days’ notice.
- vi. The Recipient shall comply with applicable USEPA general terms and conditions found at <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later>.
- vii. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier, assigned by the System for Award management, to the State Water Board.
- viii. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient’s exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board’s performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- ix. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA’s Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- x. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- xi. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- xii. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- xiii. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xiv. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient 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 if the Recipient that is a private entity is determined to have violated the foregoing.
- xv. The Recipient certifies to the best of its knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to 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 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. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks reimbursements under this Agreement.
- xvi. The Recipient must comply with the following federal non-discrimination requirements:
 - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing.
- xvii. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. 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 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 contracting officer setting forth the provisions of this nondiscrimination clause.

"(b) 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, creed, color, or national origin.

"(c) 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, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his 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.

"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency 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 by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- xviii. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.

- xix. 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. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: sam.gov
- xx. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- xxi. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxii. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxiii. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxiv. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxv. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxvi. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- xxvii. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- xxviii. The Recipient certifies that no Project Funds will be used on:
- a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - b. Telecommunications or video surveillance services produced by such entities;
 - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
 - d. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).
- xxxiii. The Recipient agrees to ensure that if the Project includes lead service line replacement, each lead service line replaced using Project Funds must be replaced in its entirety, unless the remaining portion of that service line has already been replaced or is being replaced with another funding source. For the purposes of this paragraph, a "lead service line" refers to a service line made of lead, which connects the water main to the building inlet. "Lead service line" also refers to lead goosenecks, pigtails, and connectors. A galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material. A lead service line may be owned by the water system, owned by the property owner, or both.

EXHIBIT D – SPECIAL CONDITIONS

D.1. Covenant Against Water Supply Agreement Debt

So long as this Agreement is in effect, the Recipient agrees that the Recipient will not: (1) elect to participate in a debt financing through the Central Coast Water Authority that would result in all or a portion of the debt service on such debt being payable by the Recipient under the Water Supply Agreement with the Central Coast Water Authority and such debt service being treated as an Operation and Maintenance Cost under this Agreement, (2) elect to participate in a debt financing through the Cachuma Operation and Maintenance Board that would result in all or a portion of the debt service on such debt being payable by the Recipient under the Recipient's agreement with Cachuma Operation and Maintenance Board and such debt service being treated as an Operation and Maintenance Cost under this Agreement, (3) elect to participate in a debt financing through the City of Santa Barbara that would result in all or a portion of the debt service on such debt being payable by the Recipient under the Water Supply Agreement with the City of Santa Barbara and such debt service being treated as an Operation and Maintenance Cost under this Agreement, or (4) enter into any future agreement for the purchase or acquisition of water (i) where the water supply partner may construct certain capital facilities or infrastructure specified in such agreement and (ii) under which the Recipient is obligated to pay debt service on debt incurred by the water supply partner relating to such capital facilities or infrastructure of the water supply partner and such debt service payments are treated as an Operation and Maintenance Cost under this Agreement; provided that the Recipient will be permitted to enter into an agreement of the type described in (4) if (a) such agreement provides the Recipient with the option to not participate in the debt financing of the water supply partner and the Recipient does not participate in the debt financing, or (b) the Recipient's obligation to pay debt service payments under such agreement is on parity with the Parity or Subordinate Obligations and is not treated as an Operation and Maintenance Cost under this Agreement.

Notwithstanding the foregoing paragraph, the Recipient shall be permitted to participate in a debt financing through the Central Coast Water Authority, the Cachuma Operation and Maintenance Board, the City of Santa Barbara, or a future water supply partner, including debt financings that would be paid through the respective water supply agreements, so long as the Recipient's obligation to pay from Net Revenues the portion of such debt service allocated to the Recipient is on a parity with the Parity or Subordinate Obligations and the payment of the portion of debt service allocated to the Recipient is not treated as an Operation and Maintenance Cost under this Agreement.

D.2. Funds Related to Contamination

(a) As a condition precedent to this Agreement and prior to any disbursement, the Recipient shall (i) notify the Division of any demands made by the Recipient against third parties for monetary damages, reimbursement of costs, or other relief, including litigation, related to drinking water contamination, including contamination by 1,2,3-trichloropropane (1,2,3-TCP), perfluoroalkyl and polyfluoroalkyl substances (PFAS), or other substances; and (ii) unless waived by the Division, notify and provide to the Division copies of any agreements with third parties (e.g., settlement agreements or consent agreements) or court or administrative orders arising out of litigation or disputes related to contamination of the drinking water associated with the Project.

(b) After execution of this Agreement, the Recipient shall notify the Division promptly of the new occurrence of any matters requiring notice under paragraph (a), above. Upon request, the Recipient shall promptly provide information and copies of documents as requested by the Division.

(c) Unless the Division provides approval to exclude certain funds, the Recipient shall place all funds received as a result of litigation, settlements, or orders based on contamination in the Recipient's drinking water system into a restricted reserve account, to be used for either Operation and Maintenance costs

related to addressing such contamination, or a capital improvement project, other than the Project, that addresses such contamination. Alternatively, upon consent of the Division, the funds may be used as match funding for the Project or held in a restricted reserve account to support the financial capacity of the System. The Recipient shall provide documentation satisfactory to the Division showing the total amount of such funds deposited into a restricted reserve account prior to the start of construction, and provide additional documentation thereafter of any additional funds that Recipient receives. If the Recipient has previously spent such funds for costs that are eligible for reimbursement under this Agreement, the Recipient may seek reimbursement of those costs under this Agreement, but upon receiving reimbursement for those costs, shall place the funds into a restricted reserve account in accordance with the requirements stated above.

(d) The amount of this Agreement may be reduced, and/or disbursements withheld, to offset amounts received under any contamination-related order or agreement described in paragraphs (a)(ii) or (b), above, to avoid double recovery. The Recipient shall ensure that no duplicative reimbursements of the same costs occur under both this Agreement and any past or future judgment, settlement, or order. Noncompliance with these paragraphs (a), (b), (c), or (d) shall be an Event of Default.

D.3. Executive Order N-6-22 — Russian Sanctions.

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State Water Board determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State Water Board shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State Water Board.

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia’s actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

For Recipients with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, reporting requirements include, but are not limited to, information related to steps taken in response to Russia’s actions in Ukraine, including but not limited to:

1. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and

3. Direct support to the government and people of Ukraine.

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EXHIBIT E – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

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