SRF11CX104

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6/30/11

Construction Loan/Grant
Agreement No. SRF11CX104

CITY OF FRESNO
City Clerk's Office (Original)

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH

FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND

CITY OF FRESNO
PROJECT NUMBER: 1010007-026C

FOR A CONSTRUCTION LOAN AND GRANT UNDER THE
SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

(Rev. 4/21/11)

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STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH

FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND
CITY OF FRESNO
PROJECT NUMBER 1010007-026C

UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

THIS FUNDING AGREEMENT (this "Agreement") is entered into by and between the State of California Department of Public Health ("State") and City of Fresno, a public agency, in the County of Fresno, State of California, duly organized, existing, and acting pursuant to the laws thereof, ("Supplier"), which parties do hereby agree as follows:

SECTION 1. PURPOSE OF FUNDING

This Agreement constitutes funding in the form of a loan and a grant made by State to Supplier under the provisions of California Safe Drinking Water State Revolving Fund Law of 1997, Part 12, Chapter 4.5 (commencing with Section 116760), of Division 104 of Health and Safety Code. The purpose of the funding is to assist in financing construction of a project which will enable Supplier to meet safe drinking water standards established pursuant to Part 12, Chapter 4 (commencing with Section 116270), of Division 104 of the Health and Safety Code and California Code of Regulations, Title 22, or to address other health concerns (the "Project"). Funds may be used only for such eligible project costs as are approved by State.

This Agreement also constitutes a secured promissory note for Supplier's repayment of the loan.

Supplier is solely responsible for the design, construction, operation, and maintenance of the Project; and for all persons or entities engaged in such work, including but not limited to contractors, subcontractors, suppliers, and providers of services. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of the loan funds by State and shall not be deemed to relieve or restrict Supplier's responsibility.

SECTION 2. INCORPORATION OF OTHER DOCUMENTS

This Agreement incorporates by this reference all attachments to this Agreement, Exhibit "A", "Standard Conditions"; Exhibit "B", "Security Requirements"; Exhibit "C", "Special Requirements"; Exhibit "D", "Compliance with Davis-Bacon"; Exhibit "E", "New Restrictions on Lobbying"; Exhibit "F", "Compliance with Cross-cutting Federal Authorities"; Supplier's "Application For Construction Funds"; project plans and specifications as submitted to and approved by State; and any attachments to said documents.

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

SECTION 3. PROJECT COST

Supplier represents that the total cost of the Project is estimated to be $51,405,432 (the "Project Cost") of which State agrees that $40,000,000 is eligible for Safe Drinking Water State Revolving Fund financing.

SECTION 4. LOAN AMOUNT

Pursuant to the Safe Drinking Water State Revolving Fund Law of 1997, its applicable rules and regulations, and subject to the availability of funds, State will lend to Supplier in accordance with the terms of this Agreement an amount not to exceed $40,000,000 (the "Loan").

For valuable consideration, Supplier agrees to repay State the Principal Amount of the Loan (as defined in Article A-1, hereof) together with interest, Delinquent Interest (as defined in Article A-14, hereof) and other fees and costs due thereon in accordance with terms and conditions of this Agreement. Supplier's promise to pay as set forth in this paragraph, shall survive termination of this Agreement for any reason including but not limited to operation of law.

SECTION 5. GRANT AMOUNT

Pursuant to the Safe Drinking Water State Revolving Fund Law of 1997, its applicable rules and regulations, and subject to the availability of funds, State will provide grant funding to Supplier in accordance with the terms of this Agreement in an amount not to exceed $0 (zero) (the "Grant", with the Loan and the Grant hereinafter collectively referred to as, the "Funding").

SECTION 6. SUPPLIER'S COST

Supplier agrees to fund any portion of the Project Cost which is in excess of the Funding. Supplier's cost for this Project is estimated to be $11,405,432, ("Supplier's Cost"). Unless otherwise set forth in Exhibit "C" to this Agreement, "Special Requirements", such Supplier's Cost shall be expended prior to the expenditure of State loan funds unless such Supplier's Cost is funded by other State or Federal Agencies, in which case funds shall be drawn on a pro-rata basis.

SECTION 7. COMPETITIVE BIDDING

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

Supplier shall not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by State. A full explanation must be provided if Supplier is proposing to award a construction contract to anyone other than the lowest responsible bidder.

SECTION 8. REQUIREMENTS FOR DISBURSEMENT

Not later than sixty (60) days following the Date of Execution (as defined in Section 16, hereof), Supplier shall satisfy all conditions precedent to the disbursement of the Funding, including Basic Conditions Precedent as set forth in Article A-3, hereof. Failure by Supplier to satisfy said conditions and requirements by this date may, at the option of State, result in cancellation of this Agreement under Article A-7, hereof.

SECTION 9. RATE OF INTEREST

The rate of interest to be paid by Supplier on the Principal Amount of the Loan shall be 0% (zero percent) percent per annum (the "Rate of Interest"). Interest shall begin to accrue as of the date of each Disbursement (as defined in Article A-6(b), hereof) of the Loan.

SECTION 10. LOAN REPAYMENT TERM

The Loan has a repayment term of 20 years (the "Loan Repayment Term").

SECTION 11. SPECIAL REQUIREMENTS

Supplier shall satisfy the special requirements set forth in Exhibit "C". Failure by Supplier to timely satisfy the special requirements and conditions may, at the option of

State, result in cancellation of this Agreement under Article A-7, hereof, or declaration that Supplier is in default pursuant to Article A-27, hereof.

SECTION 12. OPERATION AND MAINTENANCE OF PROJECT

Upon project completion and for a period of 20 years, which is the reasonably expected useful life of the Project, Supplier shall, as further consideration for the Funding, commence and continue operation of the Project; shall cause the Project to be operated in an efficient and economical manner; shall provide for the making of all repairs, renewals, and replacements necessary for the effective operation of the Project; and shall cause the Project to be maintained in as good of condition as upon its construction, ordinary and reasonable wear and depreciation excepted. Failure by Supplier to operate and maintain the Project in accordance with this provision may, at the option of State, be considered a material breach of this Agreement and may be treated as a default under Article A-27, hereof.

SECTION 13. FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT

Supplier shall enter into a fiscal services agreement with a Fiscal Agent substantially in the form of **Attachment 1** to this Agreement (the "Fiscal Services and Deposit Account Control Agreement"). A Fiscal Agent shall be retained until all amounts due to State under the terms of this Agreement have been paid in full.

Supplier shall open a separate deposit account (the "Deposit Account") with the Fiscal Agent, in which Supplier shall maintain funds, including the Reserve Fund (as defined in Article B-4, hereof), sufficient to service the Loan. Funds from the Deposit Account shall be used only for payment of principal and/or interest on the Loan, or any delinquencies thereon, until the Loan is repaid in full.

Once State approves the Fiscal Services and Deposit Account Control Agreement, Supplier shall not do any of the following without first obtaining written approval by State: amend the Fiscal Services and Deposit Account Control Agreement; close the Deposit Account; or retain a new Fiscal Agent.

State shall have no obligation to make Disbursements (as defined in Article A-6(b), hereof) until the Fiscal Agent has been engaged and the Fiscal Services and Deposit Account Control Agreement between Supplier and the Fiscal Agent has been approved by State.

SECTION 14. PROJECT OFFICIALS AND NOTICES

State's Contract Manager shall be the Chief, Drinking Water Technical Programs Branch, Division of Drinking Water and Environmental Management, California Department of Public Health.

State's Contract Manager shall be its representative for administration of this Agreement, and shall have authority to make recommendations and findings with respect to each controversy arising under or in connection with this Agreement, including but not limited to, the interpretation, performance, or payment for work performed under this Agreement. All such recommendations and findings shall be communicated to the Chief, Division of Drinking Water and Environmental Management of the California Department of Public Health (the "Chief"), and disputes shall be resolved in accordance with Article A-25, hereof.

Supplier's Contract Manager shall be its Professional Engineer. Supplier's Contract Manager shall be its representative for administration of this Agreement. All communications given to Supplier's Contract Manager shall be deemed given to Supplier and shall be binding on Supplier.

Either party may change its Contract Manager upon written notice to the other party.

Notices required to be given in writing by Supplier to State under this Agreement shall be sent to:

State of California
Department of Public Health
Division of Drinking Water and Environmental Management
Safe Drinking Water State Revolving Fund Program
Attn: Chief, Drinking Water Technical Programs Branch
1616 Capitol Avenue, MS 7418
Post Office Box 997377
Sacramento, CA 95899-7377

Notices required to be given in writing by State to Supplier under this Agreement shall be sent to:

City of Fresno
Attn: Professional Engineer
1910 E. University Avenue
Fresno, CA 93703

A change of address for delivery of notice may be made by either party by written notice of such change of address to the other party.

All written notices that are required either expressly or by implications to be given by one party to the other under this Agreement shall be signed for State by its Contract Manager and for Supplier by its Contract Manager. Except as otherwise expressly required by this Agreement, all such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed postage prepaid envelope and deposited in a United States Post Office for delivery by registered or certified mail.

SECTION 15. ENFORCEMENT

Any enforcement action, arising out of or relating to this Agreement may be brought by State or any agent thereof.

SECTION 16. MISCELLANEOUS PROVISIONS

ATTORNEY FEES

In the event either party commences an action or proceeding concerning the subject matter of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorney fees incurred therein.

SEVERABILITY

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

GOVERNING LAW

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

CHILD SUPPORT COMPLIANCE ACT

Supplier acknowledges that it is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. Supplier further acknowledges that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

FEDERAL FINANCIAL ASSISTANCE

Supplier acknowledges that the source of funds disbursed to Supplier by State under this Agreement includes federal financial assistance, and Supplier agrees to comply with all applicable Cross-cutting Federal Authorities including those listed in Exhibit "F" to this Agreement, and provisions of the Single Audit Act as set forth in the Federal Office of Management and Budget (OMB) Circular A-133.

LEGAL CAPACITY

Supplier hereby warrants and represents that it is a legal entity in good standing, and that it has the authority to enter into this Agreement and to incur the indebtedness described herein.

Supplier shall notify State as promptly as feasible of any proposed change in Supplier's ownership, organization, legal form or service area.

VENUE

The parties agree that venue of any action between the parties arising out of this Agreement, including disputes that may arise following termination of the Agreement, shall be County of Sacramento, State of California.

DATE OF EXECUTION

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

[Signatures appear on following page.]

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

SUPPLIER:

CITY OF FRESNO

By: [signature]

Name: PATRICK N. WIEMILLER

Title: DIRECTOR OF PUBLIC UTILITIES

Date: 6/30/11

Address: 2600 FRESNO STREET
FRESNO, CA. 93721

ATTEST:

REBECCA E. KLISCH
City Clerk

By: Cindy Bruer 6/30/11
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: [signature]
Mark Gleason, Deputy

STATE:

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

By: Leah Walker

Name: Leah Godsey Walker

Title: Division Chief

Date: 6/30/11

Approved as to Legal Form and Sufficiency:

By: [signature]

Name: Peter A. Baldridge

Title: Assistant Chief Counsel

Date: 6/14/2011

EXHIBIT A

STANDARD CONDITIONS

ARTICLE A-1. DEFINITIONS

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

Agreement or Contract--The Funding Agreement to which this "Exhibit 'A' Standard Conditions" is appended.

Days--Calendar days unless otherwise expressly indicated.

Month--Calendar month unless otherwise expressly indicated.

Year--Calendar year unless otherwise expressly indicated.

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

Eligible Project Costs--Those project costs which are eligible for funding under applicable State and Federal law.

Fiscal Agent--A bank, which includes savings banks, savings and loan associations, credit unions and trust companies, or any other financial institution or entity approved by State responsible for funds deposited for the repayment of all amounts due to State under the terms of this Agreement.

Force Account--The use of Supplier's own employees or equipment, for planning, engineering, design, construction or construction related activities on the Project.

Grant Amount-- The aggregate amount of the Grant disbursed to Supplier under this Agreement. The Grant Amount is characterized as a subsidized loan principal amount, as authorized by 42 U.S.C. 300j-12(d), is not intended and shall not be characterized as a federal subgrant.

Principal Amount of the Loan --The total amount disbursed to Supplier under this Agreement less any Grant Amount disbursed and any amount of such total amount disbursed that may have been repaid or remitted to State by Supplier.

Project Completion Date--The date that is determined by Article A-8, hereof.

Public Water System or Public Water Supply System--A system for the provision to the public of water for human consumption, as defined in Part 12, Chapter 4 (commencing with Section 116270), of Division 104 of the Health and Safety Code, as it may be amended from time to time.

ARTICLE A-2. TERM OF AGREEMENT

Subject to the provisions of Article A-7, this Agreement shall become effective on the Date of Execution and shall remain in effect until the Principal Amount of the Loan, all interest thereon, and any other sums of money due to State under this Agreement, have been paid in full or until the expiration of the period of time required for operation and maintenance of the Project, as set forth in Section 12 of this Agreement, whichever shall occur last (the "Term of Agreement").

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

State shall have no obligation to disburse the Funding, or any portion thereof, unless and until Supplier has done all of the following:

(a) Supplier's governing body has taken action authorizing it to borrow the Loan and to enter into this Agreement, and designating a representative to execute this Agreement and to sign claims for Disbursements (as defined in Article A-6(b), hereof);

(b) Supplier has dedicated a source of revenue for repayment of the Principal Amount of the Loan plus all interest accrued;

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

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

(e) Supplier has engaged the services of a Fiscal Agent and the Fiscal Services and Deposit Account Control Agreement has been fully executed as required by Section 13 of this Agreement; and

(f) Supplier has submitted an initial budget summary to State substantially in the form of **Attachment 3** to this Agreement and said initial budget summary has been approved by State.

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

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

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

ARTICLE A-5. PROJECT CHANGES

The Project shall be constructed in accordance with the plans and specifications as approved by State on April 12, 2011. Supplier shall not make any change in the Project, or issue any change order to a contractor which affects the treatment process, would increase the capacity of any project component, causes a significant change in the location of any project component, or affects the timely completion of the Project, without receiving prior written approval from State.

Supplier may request a one-time increase in the Funding. Such request shall be based upon the final accepted construction bids. Such request may be granted or denied at the sole discretion of State.

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

ARTICLE A-6. DISBURSEMENTS BY STATE

(a) Claims. Supplier shall request disbursement by submitting to State a claim(s) for incurred Eligible Project Costs. A claim for Disbursement (as defined in Article A-6(b)) shall be provided in the form of **Attachment 4** to this Agreement. A claim shall be submitted no less frequently than quarterly, but no more frequently than once a month. **Claim submission shall commence not later than six months following the Date of Execution**. Each claim shall include:

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

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

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

(b) Disbursements. Following the review and approval of a claim by State, State will disburse to Supplier an approved amount, subject to the availability of funds

(each, a "Disbursement"). All Disbursements, and any and all interest earned by Supplier on the Disbursements, shall be used solely to pay Eligible Project Costs. The Loan shall be disbursed before the Grant is disbursed.

(c) Rejection of Claims. State may reject a claim if:

(1) It is submitted without signature;

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

(3) Supplier fails to timely submit a final claim within the time period specified in Article A-6(f), hereof;

(4) Not submitted in accordance with subpart (a) of this Article A-6; or

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

State will notify Supplier of any claim so rejected, and the reasons therefore.

(d) Correction of Claims. A claim containing a mathematical error will be corrected by State, after telephone notification to Supplier; and will thereafter be treated as if submitted in the corrected amount. State will provide Supplier with notification of the corrected claim.

(e) Adjustments to Claims. State will notify Supplier by certified or registered mail, whenever, upon review of a claim, State determines that any portion or portions of the costs claimed:

(1) Are ineligible to be financed by the Safe Drinking Water State Revolving Fund under Federal or State law, or the terms of this Agreement,

(2) Do not constitute costs approved by State for financing under the terms of this Agreement;

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

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

Supplier may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Supplier fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending claim by the amount of the ineligible and/or unapproved cost(s). Supplier may

continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent claim.

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

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

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

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

(4) A fully executed "Final Release" in the form of **Attachment 5**.

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

Commencement of repayment of the Principal Amount of the Loan and interest pursuant to Article A-13, hereof, may be required prior to the final Disbursement.

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

If Supplier is using the services of its own employees, Supplier shall establish accounts and maintain records which reasonably document all employee hours and costs charged to the Project and the associated tasks performed by each employee.

ARTICLE A-7. WITHHOLDING OF LOAN AND GRANT DISBURSEMENTS BY STATE AND CANCELLATION OF AGREEMENT

(a) Conditions for Withholding. If State determines that the Project is not being carried out substantially in accordance with the provisions of this Agreement or that Supplier has failed in any other respect to comply with the terms and conditions of this Agreement, State shall give written notice to Supplier of such failure to comply. If Supplier does not cure any such failure to State's satisfaction within thirty (30) calendar days of receipt of such notice, State may withhold from Supplier all or any portion of the Loan and/or Grant and take any other action that it deems necessary to protect its

interests, including but not limited to declaring Supplier in default as set forth in Article A-27, hereof, or canceling this Agreement pursuant to subpart (b) of this Article A-7.

(b) Withholding Entire Funding. If State determines to withhold the entire Funding from Supplier pursuant to subpart (a) of this Article A-7, notice of such a determination shall constitute a notice of cancellation of this Agreement, and this Agreement shall no longer be binding on any party hereto. Said notice of cancellation shall be sent to Supplier by certified or registered mail, and shall be effective upon receipt.

(c) Withholding Balance of Loan and/or Grant. Where a portion of the Funding has been disbursed to Supplier and State has determined to withhold the balance of the Loan and/or Grant, State shall notify Supplier in writing, via certified or registered mail, that State is withholding the balance of the Loan and/or Grant from Supplier, pursuant to subpart (a) of this Article A-7. In such event, Supplier is deemed to be in default and subject to the provisions of Article A-27, hereof.

ARTICLE A-8. TIMING OF PROJECT

(a) Supplier shall complete the Project not later than three (3) years from the Date of Execution. Supplier's failure to complete the Project within the specified time period may, at the option of State, be considered a material breach of this Agreement and may be treated as a default under Article A-27, hereof.

(b) Within 15 days following completion of the Project, Supplier shall certify to the local District Office of the State of California Department of Public Health that the Project is complete and ready for final inspection. Supplier's certification, as required by this subpart (b), shall be substantially in the form provided by State and attached hereto as **Attachment 6** to this Agreement.

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

(d) The date of State's certification or the date set forth in subpart (a) of this Article A-8, whichever shall occur first, shall be the "Project Completion Date" for purposes of this Agreement.

ARTICLE A-9. SUPPLIER'S CONTRACTS

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

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

(a) Upon execution of this Agreement and until 3 years following final Disbursement, pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit by State or any agent thereof. Parties are also subject to examination and audit of the United States Environmental Protection Agency, the Comptroller General of the United States, and the United States Office of the Inspector General, with respect to all matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records must be retained until such action is resolved, or until the end of said time period, whichever shall later occur. All records of Supplier relating in any way to funding received pursuant to this Agreement shall be preserved for this purpose.

(b) During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by Supplier to comply with this provision shall be considered a material breach of this Agreement, and State may declare Supplier in default as set forth in Article A-27, withhold disbursements to Supplier, or take any other action it deems necessary to protect its interests. The provisions of this subpart (b) shall be effective until expiration of the time period provided in subpart (a) of this Article A-10.

ARTICLE A-11. STATEMENT OF PRINCIPAL AMOUNT OF LOAN

(a) Transmission of Statement to Supplier. Within sixty (60) days after the final Disbursement, State shall transmit to Supplier a written statement setting forth the Principal Amount of the Loan.

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

Such remittance to State shall not constitute repayment of any part of the Principal Amount of the Loan, but shall be deemed to be a return to State of part of the funds disbursed.

ARTICLE A-12. INTEREST PAYMENTS DURING CONSTRUCTION

During construction, Supplier shall pay interest to State at the rate specified in Section 9 of this Agreement on all Disbursements of the Loan. Interest on Disbursements of the Loan shall not be deferred.

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

ARTICLE A-13. REPAYMENT OF PRINCIPAL AMOUNT OF LOAN AND INTEREST

(a) Terms of Repayment. State will invoice Supplier semiannually for principal and any interest payments. Such invoices will include a statement of the then Principal Amount of the Loan, the amount of the payment which constitutes principal to be paid, and the amount of the payment which constitutes interest, if any, to be paid.

Supplier shall make semiannual payments to State no later than January 1 and July 1 of each year until the Principal Amount of the Loan is repaid in full. Principal and interest payments shall commence no later than one (1) year from the Project Completion Date. Supplier shall make level semiannual payments based on a standard semiannual payment loan amortization method to be determined by State. The standard amortization method shall incorporate the Principal Amount of the Loan as determined by Article A-11, hereof, the Loan Repayment Term specified in Section10 of this Agreement, and the Rate of Interest, as specified in Section 9 of this Agreement.

The final semiannual payment shall be in an amount equal to the then outstanding Principal Amount of the Loan, plus any remaining unpaid accrued interest. Interest on the Principal Amount of the Loan shall not be deferred.

Unless earlier payment is required by the terms of this Agreement, the Principal Amount of the Loan, interest, Delinquent Interest, and any other charges or fees shall be due and payable 20 years from the Project Completion Date specified in Article A-8, hereof.

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

ARTICLE A-14. PAYMENT DELINQUENCY

Any payment of principal and/or interest required to be paid by Supplier to State pursuant to this Agreement which remains unpaid after it becomes due and payable shall be delinquent. Delinquent interest charges shall be in addition to any other charges or payments owing State from Supplier and shall accrue at the rate of one tenth of one percent (0.1%) per day, on the amount of such delinquent payment, for each day it remains unpaid past the tenth (10th) day after the date payment was due (the "Delinquent Interest"). The Delinquent Interest assessed will not be added to the Principal Amount of the Loan but will be treated as a separate account and obligation of Supplier. Delinquent Interest shall accrue on the total payment amount from the due date of payment through the date payment is made. Any payment by Supplier under terms of this Agreement is deemed to have been made when it is received by State.

ARTICLE A-15. ACCOUNTING AND DEPOSIT OF DISBURSEMENTS

(a) Separate Accounting of Disbursements and Interest; Records. Supplier shall account for Disbursements received separately from all other Supplier's funds. Supplier shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles. Supplier shall keep complete and accurate records of all receipts, Disbursements, and interest earned on the Disbursements. Invoices must be maintained for a period of at least three (3) years following final Disbursement. All other records must be maintained for the Loan Repayment Term.

Supplier shall require its agents, contractors and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with Generally Accepted Accounting Principles. Records are subject to inspection by State at any and all reasonable times.

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

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

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

ARTICLE A-16. INSPECTIONS OF PROJECT BY STATE

State shall have the right but not the duty to inspect the work being performed on the Project at any and all reasonable times during the Term of Agreement. This right shall extend to inspection of any portion of the Project under control of Supplier's contractor and/or subcontractors, and Supplier shall include provisions ensuring such access in all its contracts or subcontracts related to the Project.

ARTICLE A-17. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION

During the Term of Agreement:

(a) Supplier shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Supplier's service of domestic water, without prior written consent of State. State may require as a condition of such consent, that Supplier's proceeds from any such disposition of any real or personal property be transferred to State to be applied to Supplier's indebtedness under this Agreement.

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

ARTICLE A-18. NONDISCRIMINATION CLAUSE

During the Term of Agreement, Supplier, its contractors and subcontractors shall not deny this Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. Supplier, its contractors and subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Supplier, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.7) and the regulations or standards adopted by the awarding State Agency to implement such article.

By signing this Agreement, Supplier assures State that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et

seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989); Federal Water Pollution Control Act Amendments of 1972, Pub.L. No. 92-500, 86 Stat 816; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same (collectively, the "Anti-Discrimination Laws").

Supplier agrees to collect and maintain information to show compliance with the Anti-Discrimination Laws including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

Supplier agrees to cooperate with State in all manner necessary to permit State to adequately report to the United States Environmental Protection Agency on Supplier's compliance with the Anti-Discrimination Laws.

Supplier, its contractors and subcontractors shall give written notice of their obligations under this Article A-18 to labor organizations with which they have a collective bargaining or other agreement.

Supplier's signature on this Agreement shall constitute a certification under the penalty of perjury under the laws of the State of California that Supplier has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990, and Title 2, California Code of Regulations Section 8103.

Supplier shall include the nondiscrimination and compliance provisions of this Article A-18 in all contracts and subcontracts to perform work on the Project.

ARTICLE A-19. WORKERS' COMPENSATION CLAUSE

Supplier affirms that it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Supplier affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

ARTICLE A-20. SUCCESSORS AND ASSIGNS

This Agreement and all of its provisions shall inure to the benefit of, apply to, and bind the heirs, successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part hereof by Supplier shall be valid unless and until it is

approved in writing by State and made subject to such reasonable terms and conditions as State may impose.

ARTICLE A-21. STATE TO BE HELD HARMLESS

Supplier shall indemnify, hold harmless, protect and defend State and its officers, employees, agents and representatives from loss, suits, actions or claims brought for, or on account of violation of laws, ordinances, rules, or regulations, or injury, damage, or loss, including death, caused by acts or omissions of Supplier, its employees, contractors, or agents; or in any way arising from, or related to the Project.

ARTICLE A-22. REMEDIES NOT EXCLUSIVE

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

ARTICLE A-23. AMENDMENTS

This Agreement may be amended only by mutual written agreement signed by the parties hereto. Requests by Supplier for amendments must be in writing stating the amendment request and the reason for the request.

ARTICLE A-24. WAIVER OF RIGHTS

It is the intention of the parties hereto that from time to time either party may waive any of its rights under this Agreement unless contrary to law. Any waiver by either party hereto of rights arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other rights or matters.

ARTICLE A-25. DISPUTE CLAUSE

Any dispute that Supplier may have regarding the performance of this Agreement including, but not limited to, claims for Disbursements or extensions of time, shall be submitted to State's Contract Manager identified in Section 14 of this Agreement. State's Contract Manager may make findings and recommendations and shall transmit a copy of any such findings and recommendations to the Chief (as defined in Section 14, hereof) who shall make a decision. Such decision shall be written and transmitted to Supplier by certified or registered mail, and shall be final and conclusive.

ARTICLE A-26. PERFORMANCE AND ASSURANCES

Supplier agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications as submitted and approved, or as later amended and approved by State under this Agreement and to

apply funds received only to Eligible Project Costs and to operate and maintain the Project in accordance with applicable provisions of the law.

ARTICLE A-27. DEFAULT PROVISIONS

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

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

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

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

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

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

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

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

(b) When an Event of Default occurs, State shall give Supplier notice of default. Supplier shall have thirty (30) calendar days from the date of such notice to cure the default. If Supplier fails to timely cure the default to the satisfaction of State, State may do any or all of the following:

(1) Declare that the aggregate amount of all Disbursements made by State, including any portion of the Grant, shall be deemed the Loan, and shall be repaid to State in accordance with the terms of this Agreement;

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

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

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

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

(6) Notwithstanding the provisions of Section 5, hereof, commencing from the date of each Disbursement, apply the Rate of Interest specified in Section 9, hereof, to all Disbursements made by State, including any portion of the Grant; and/or

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

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

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

ARTICLE A-28. DRUG-FREE WORKPLACE CERTIFICATION

By signing this Agreement, Supplier hereby certifies under penalty of perjury under the laws of the State of California that Supplier will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations;

(b) Establish a Drug-Free Awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace;

(2) The person's or organization's policy of maintaining a drug-free workplace;

(3) Any available counseling, rehabilitation and employee assistance programs; and

(4) Penalties that may be imposed upon employees for drug abuse violations.

(c) Every employee who works on the Project:

(1) Will receive a copy of Supplier's drug-free policy statement; and

(2) Will agree to abide by terms of Supplier's statement as a condition of employment on the Project.

This Agreement may be subject to suspension of payments or termination, or both, and Supplier may be subject to debarment if State determines that (1) Supplier has made a false certification, or (2) Supplier violates the certification by failing to carry out the requirements of this Article A-28.

ARTICLE A-29. CONFLICT OF INTEREST--CURRENT AND FORMER STATE EMPLOYEES

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

ARTICLE A-30. ADDITIONAL INSURED

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

ARTICLE A-31. PROHIBITED USE OF STATE FUNDS FOR SOFTWARE

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

ARTICLE A-32. LABOR COMPLIANCE

Supplier shall comply with Public Resources Code Section 75075 and all applicable implementing guidelines and regulations adopted by California Department of Industrial Relations, regarding Labor Compliance Programs. Supplier's failure or refusal to comply with this requirement shall be considered a material breach of this Agreement.

ARTICLE A-33. DAVIS-BACON ACT COMPLIANCE

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

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

On or after the Date of Execution, Supplier agrees to include, or cause to be included, in full, the applicable language set forth in **Attachment 7**, hereof, in all Project bid solicitation documents and in all Project contracts and subcontracts in excess of $2,000 entered into for the actual construction, alteration and/or repair, including painting and decorating of any Project component.

Supplier shall send a report to State at the end of each calendar quarter and on a form acceptable to the State, in which Supplier shall certify to State that all applicable Davis-Bacon Act requirements for the Project are being complied with, including, without limitation, the requirement that Supplier certify to State that Supplier is collecting and reviewing certified Davis-Bacon payrolls from Supplier's construction contractors. Supplier's failure to provide the quarterly reports required by this Article A-33 may result in State's withholding disbursements until the reports are provided in a form acceptable to the State.

ARTICLE A-34. NEW RESTRICTIONS ON LOBBYING

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

ARTICLE A-35. SINGLE AUDIT ACT

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

ARTICLE A-36. ADDITIONAL REPORTING

Supplier acknowledges that, from time to time during the term of this Agreement, State may receive further guidance from the United States Environmental Protection Agency ("USEPA") which may require additional information/reporting from Supplier. Upon such guidance from USEPA, State will notify Supplier in writing. Upon notification, Supplier agrees to provide the requested information/reports to State in the time period specified. Supplier's failure to provide the requested information/report in the time specified may be deemed by State to be a material breach of this Agreement and may be treated as a default under Article A-27.

ARTICLE A-37. DATA UNIVERSAL NUMBER SYSTEM (DUNS)

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

EXHIBIT B

SECURITY REQUIREMENTS

ARTICLE B-1 NO PRIORITY FOR ADDITIONAL LOANS

Supplier agrees that it shall not incur any additional indebtedness having any priority in payment over Supplier's obligations to State under this Agreement; and that it shall not give security in any facility or equipment, which are constructed or obtained under the terms of this Agreement, without obtaining prior written consent of State, which consent shall not be unreasonably withheld.

ARTICLE B-2 RATES AND CHARGES

Supplier agrees that it will levy and collect assessments or user charges as may be necessary to operate and to maintain the Project and to meet the payments of the Loan when due; and if for any reason, gross revenues prove insufficient to make payments due pursuant to this Agreement, Supplier agrees to raise sufficient funds through increased user charges or assessments or any other legal means available to it to meet the Loan payments and to operate and to maintain the Project.

ARTICLE B-3 SECURITY INTEREST

Supplier pledges to repay the entire Principal Amount of the Loan, together with all interest thereon, as set forth in this Agreement, from City of Fresno Department of Public Utilities revenue stream(s) consisting of user water rates, fees, and charges ("Revenues") and agrees that its obligation to repay the Loan is an "Additional Parity Obligation", as defined in that certain Indenture between the City of Fresno and the Bank of New York Mellon Trust Company, N.A., as trustee, dated as of January 1, 2010, for the City of Fresno Water System Revenue Bonds (the "Bond Indenture") and attached hereto as **Attachment 13** and incorporated herein by reference.

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

ARTICLE B-4 RESERVE FUND

Supplier agrees to provide for the accumulation of necessary reserves (the "Reserve Fund") in accordance with Section 13 of this Agreement to assure that funds will be available to make the semiannual payments when due. At a minimum, a reserve of two (2) semiannual payments shall be accumulated during the first 10 years of the

Loan Repayment Term and thereafter be maintained at that level. The Reserve Fund shall be maintained and administered by the Fiscal Agent.

ARTICLE B-5 LEGAL OBLIGATION

This Agreement and payment due hereunder, shall not in any way be construed to be a debt of City of Fresno in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness nor will anything contained in this Agreement constitute a pledge or obligation of general revenues, funds, or moneys for City of Fresno is obligated to levy or pledge any form of taxation.

This Agreement is a limited obligation of the City of Fresno and is not secured by a legal or equitable pledge of, or charge or lien upon, any property of the City of Fresno or any of its income or receipts, except the Revenues. Neither the full faith and credit nor the taxing power of the City of Fresno is pledged to the payment of any obligations pursuant to this Agreement. No tax or other sources of funds, other than the Revenues, is pledged to the payment of any obligations pursuant to this Agreement. No obligation for payment pursuant to this Agreement constitutes a debt, liability or obligation of the City of Fresno for which the City of Fresno is obligated to levy or pledge any form of taxation or for which it has levied or pledged any form of taxation.

EXHIBIT C

SPECIAL REQUIREMENTS

ARTICLE C-1 SECURITY

(a) Supplier grants to State a security interest in the Deposit Account, as more fully described in Section 13, hereof.

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

ARTICLE C-2 ADDITIONAL REQUIREMENTS

(a) Throughout the useful life of the Project (as provided in Section 12, hereof), Supplier is responsible for the implementation of practices substantially equivalent to the urban water conservation "best management practices" of the California Urban Water Conservation Council.

(b) Supplier shall notify State's Fresno District Office when the Project is twenty-five percent (25%) complete, fifty percent (50%) complete and seventy-five percent (75%) complete.

(c) Notwithstanding any term or condition to the contrary in this Agreement, including but not limited to Article A-8(c), the Supplier may place a Project facility into operation prior to completion of the Project without prior written approval from State's Fresno District Office.

(d) Supplier agrees to comply with Section 5.12 of the Bond Indenture (the "Debt Coverage Ratio"); and agrees to maintain, at all times, the Debt Coverage Ratio until the entire Principal Amount of the Loan has been repaid in full. Supplier also agrees to demonstrate Supplier's satisfaction of the Debt Coverage Ratio to State, effective as of the end of the Suppliers fiscal year (which is currently June 30), by submitting a copy of Supplier's audited financial statements to State by not later than March 31 of each year following the end of the Supplier's fiscal year. Included with the audited financial statements shall also be a statement from Supplier certifying to its conformance with the Debt Coverage Ratio requirement.

(e) Supplier shall comply with the requirements under ARTICLE A-33 by complying with guidance given by USEPA that: "for projects for which construction contracts were awarded prior to the award of the SRF funding, a construction change

order must apply the federal Davis-Bacon requirements to such projects and contractors/sub-contractors. Davis-Bacon prevailing minimum wage requirements apply retroactively to October 30, 2009, and any deficiencies must be identified and corrected. However, non-wage Davis-Bacon requirements (e.g. administrative, monitoring, reporting type requirements) for such projects are not retroactively required, but are required as of the date of the construction contract(s) change order(s) for Davis-Bacon implementation."

(f) Supplier acknowledges the provisions of California's Water Measurement Law (California Water Code, Division 1, Chapter 8, commencing with Section 500), and Supplier agrees to commence charging, not later than one (1) year following the Project Completion Date, a volumetric water rate to all customers whose water meters were installed as a component of the Project.

(g) Notwithstanding any other provision, term or condition of this Agreement, including but not limited to Section 6, State loan funds provided pursuant to this Agreement may be expended prior to Supplier's expenditure of Supplier's Cost.

(h) State acknowledges that prior to the Date of Execution, any failure by Supplier to comply with the requirements of Article F-3, hereof, shall not constitute an Event of Default; provided, however, that Supplier expressly agrees to comply with the requirements of Article F-3 for the selection of all construction contractors, and for the procurement of all equipment, supplies, construction, and services related to the Project occurring after the Date of Execution.

EXHIBIT D

COMPLIANCE WITH DAVIS-BACON

ARTICLE D-1. DAVIS-BACON PROVISIONS

USEPA Region 9 has provided guidance on the Davis-Bacon Act requirements, which is attached hereto as "Attachment 7" and incorporated herein by reference. As used in **Attachment 7**, the term "subrecipient" means Supplier, and the terms "State", "State recipient" and "recipient" each mean the State of California Department of Public Health.

If Supplier is a governmental entity (including, without limitation, a city, county, city and county, or local agency), the applicable contract language that is required is set forth in Section I of **Attachment 7**. If Supplier is not a governmental entity, the applicable contract language that is required is set forth in Section II of **Attachment 7**.

EXHIBIT E

NEW RESTRICTIONS ON LOBBYING

ARTICLE E-1. NEW RESTRICTIONS ON LOBBYING

40 CFR Part 34 – New Restrictions on Lobbying

Subpart A—General

§34.100 Conditions on use of funds.

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

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

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

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

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

§34.105 Definitions.

For purposes of this part:

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

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

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

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

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

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

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

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

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

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

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

(h) Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

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

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

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

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

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

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

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

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

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

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

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

or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

§34.110 Certification and disclosure.

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

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

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

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

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

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

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

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

paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

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

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

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

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

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

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

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

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

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

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

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

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

forms shall not be required at time of award or commitment but shall be filed within 30 days.

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

Subpart B—Activities by Own Employees

§34.200 Agency and legislative liaison.

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

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

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

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

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

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

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

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

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

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

§34.205 Professional and technical services.

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

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

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

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

§34.210 Reporting.

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

Subpart C—Activities by Other Than Own Employees

§34.300 Professional and technical services.

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

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

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

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

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

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

Subpart D—Penalties and Enforcement

§34.400 Penalties.

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

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

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

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

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

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

§34.405 Penalty procedures.

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

§34.410 Enforcement.

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

Subpart E—Exemptions

§34.500 Secretary of Defense.

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

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

Subpart F—Agency Reports

§34.600 Semi-annual compilation.

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

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

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

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

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

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

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

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

§34.605 Inspector General Report.

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

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

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

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

EXHIBIT F

COMPLIANCE WITH CROSS-CUTTING FEDERAL AUTHORITIES

ARTICLE F-1. COMPLIANCE WITH FEDERAL AUTHORITIES

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

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

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

ARTICLE F-2. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

(b) In addition, if the Project is to be constructed in a geographical area that has been designated by the Office of Federal Contract Compliance for special treatment, Supplier agrees that it will undertake, and will require its contractors and subcontractors to undertake affirmative action programs in accordance with regulations and other directives promulgated by that Office.

ARTICLE F-3. PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES

(a) Supplier acknowledges that Executive Orders 11625,12138, and 12432 are applicable to this Agreement, and that the United States Environmental Agency (EPA) adopted regulations to implement those requirements [40 Code of Federal Regulations Part 33 Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs – {Federal DBE Regulations}]. In compliance with Federal DBE Regulations, State has negotiated "Fair Share Objectives" with EPA for participation of Minority Business Enterprises and Women's Business Enterprises in procurement activity undertaken with funds made available to Supplier under this Agreement. The "Fair Share Objectives" are set forth in the CDPH DBE Utilization Guidance attached as **Attachment 8** to this Agreement and incorporated herein by this reference. Supplier agrees that it will cooperate with and assist State in realizing the "Fair Share Objectives" and will exercise good faith efforts to achieve such participation of disadvantaged business enterprises, and in particular agrees that in the selection of construction contractors, and for the procurement of equipment, supplies, construction, and services related to the project, it, at a minimum, has or will undertake the following affirmative steps:

(1) Include disadvantage business enterprises on solicitation lists;

(2) Assure that disadvantaged business enterprises are solicited whenever they are potential sources;

(3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged business enterprises;

(4) Establish delivery schedules, when the requirements of the work permit, which will encourage participation by disadvantaged business enterprises;

(5) Use the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, and the California Unified Certification at the California Department of Transportations, as appropriate; and

(6) If any contractor awards subagreements, require the contractor to take the affirmative steps in paragraphs (1) through (5) of this paragraph.

(b) Supplier agrees that prior to the award of any contract for the procurement of equipment, supplies, construction, or services related to the Project, it has or will review the efforts of such contractor to include disadvantaged business enterprises and will assure State that such contractor has complied with the requirements of this Article F-3. A form for providing said assurance will be provided by State in a form substantially similar to that of **Attachment 9** to this Agreement.

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

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

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

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

(g) As required by Federal DBE Regulations, Supplier agrees to create and maintain a bidders list of all firms that bid or quote on prime contracts or bid or quote subcontracts on the project. Supplier shall maintain bidders list until Supplier has certified project completion to State. (See **Attachment 11**.)

(h) Supplier agrees that it shall report to State on procurements and utilization of Disadvantaged Business Enterprises semiannually, within fifteen (15) days after April 1 and October 1, throughout the project, until after submission of the final claim, Supplier shall report, using **Attachment 12** to this Agreement.

ARTICLE F-4. PROCUREMENT PROHIBITIONS

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

ARTICLE F-5. DEBARMENT AND SUSPENSION

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

(a) Instructions for Certification

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENTS

Attachment 1. Fiscal Services and Deposit Account Control Agreement (Section 13)

Attachment 2. Deposit Account Maintenance Agreement (Article A-3(d))

Attachment 3. Initial Budget Summary (Article A-3(f))

Attachment 4. Claim for Disbursement of Funds (Article A-6(a))

Attachment 5. Final Release (Article A-6(f)(4))

Attachment 6. Supplier's Certification of Project Completion (Article A-8(b))

Attachment 7. Davis Bacon Wage Provisions (Article A-33)

Attachment 8 Minority Business Enterprise – Women's Business Enterprise Goals for Participation (Article F-3(a))

Attachment 9. Disadvantaged Business Enterprise Information Form (Article F-3(b))

Attachment 10. Example DBE/MBE/WBE Bid Solicitation (Article F-3(e))

Attachment 11. Bidders List (Article F-3(g))

Attachment 12. Minority Business Enterprise/Women Business Enterprise MBE/WBE Quarterly Utilization Report (Article F-3(h))

Attachment 13 City of Fresno Water System Revenue Bonds Indenture

ATTACHMENT 1

FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT

CONTACT LIST

The following is a list of Bank's that offer services as a fiscal agent and that have agreed to use California Department of Public Health's (CDPH) form Fiscal Services and Deposit Account Control Agreement. CDPH is willing to work with any other bank of your choice that offers services as a fiscal agent, so long as such bank is willing to use CDPH's form Fiscal Services and Deposit Account Control Agreement.

California Bank & Trust
1331 Broadway
Sacramento, CA 95818
Catherine Gon
cgon@calbt.com
(916) 341-4912
800-499-4614

US Bank
Mail Station SF-CA-SF
One California St., Suite 2100
San Francisco, CA 94111
Karen Lei
Karen.lei@usbank.com
(415) 273-4540

Wells Fargo Bank
333 Market Street, 18th Floor, MAC A0119-181
San Francisco, CA 94105
Karen Mitani
Karen.t.mitani@wellsfargo.com
(415) 371-3353

Enclosed is a template titled "Fiscal Services and Deposit Account Control Agreement. Please contact Lorri Silva with CDPH at (916) 449-5639 or Josh Ziese at (916) 445-5284 if you will be using US Bank or Wells Fargo Bank as your fiscal agent. You will need to obtain the appropriate template for use with those Banks.

FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT

This FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT (this "Agreement") is entered into as of _____, 20___, among _____ ("Depositor"), _____, a _____ ("Fiscal Agent") and the State of California Department of Public Health ("Secured Party"), who each hereby agrees as follows.

RECITALS

A. Secured Party has issued or will issue a Funding Agreement to Depositor under the Safe Drinking Water State Revolving Fund Law of 1997 (the "Funding Agreement"), whereby Secured Party has made or will make a loan to Depositor in a principal amount of up to $_____.__ (the "Loan").

B. The Funding Agreement requires or will require, among other things, that Depositor engage the services of a fiscal agent to assist in accumulating funds sufficient to repay the Loan to Secured Party.

C. For valuable consideration, receipt of which is hereby acknowledged by Depositor, and in order to secure the Loan, Depositor has granted Secured Party a security interest in deposit account number(s) _____ maintained by Depositor with Fiscal Agent at the office indicated on the signature page below, any subaccount(s) or related account(s) into and from which balances from such account(s) are swept by Fiscal Agent from time to time for reserve related or other purposes, all funds now or hereafter deposited into such account(s), and any proceeds thereof, including without limitation any interest earned thereon (collectively, the "Account").

D. All capitalized terms defined in the UCC (as hereinafter defined) and not otherwise defined in this Agreement shall have the same meaning in this Agreement as in the UCC, and the rules of interpretation in Article 1 of the UCC shall apply to the interpretation of this Agreement.

E. In connection with the foregoing, Depositor is requesting that Fiscal Agent enter into this Agreement in order to perform services as Depositor's fiscal agent and perfect Secured Party's security interest in the Account.

AGREEMENT

1. Definitions.

a. "Business Day" means a day, other than a Saturday, Sunday or holiday on which the applicable party is open for business at the location to which the communication is sent.

b. "Disposition Instruction" means an instruction to Fiscal Agent directing the disposition of the funds in the Account.

c. "Invoice" means each semiannual invoice prepared by Secured Party, which includes, without limitation, all accrued interest and the principal and/or interest amount due and payable by Depositor for such preceding semiannual period of the Loan.

d. "Notice of Exclusive Control" means the first instruction to Fiscal Agent originated by Secured Party directing that Fiscal Agent no longer comply with Depositor's Disposition Instructions. The Notice of Exclusive Control may also contain a Disposition Instruction originated by Secured Party.

e. "Outside Time" means the opening of business on the first Business Day following the Business Day on which the Notice of Exclusive Control is received at the address for Fiscal Agent specified herein. If the Notice of Exclusive Control is received at such address after 2:00 p.m., local time, then in determining the Outside Time, the Notice of Exclusive Control will be considered to have been actually received on the following Business Day.

f. "UCC" means the Uniform Commercial Code of the jurisdiction whose law governs this Agreement or, if relevant to any matter other than the meaning of a defined term, the Uniform Commercial Code of the jurisdiction whose law applies to the matter under the choice of law rules of the jurisdiction whose law governs this Agreement.

2. Fiscal Agent's Responsibility.

a. Fiscal Agent shall perform the following services:

(i) Receive Invoices from Secured Party on behalf of Depositor and transmit payments to Secured Party when instructed; and

(ii) Promptly give written notice to Secured Party of any failure by Depositor to satisfy the deposit requirements set forth in Section 3 hereof, including but not limited to Depositor's delinquency in making such deposits.

b. Fiscal Agent shall have no duty to inquire or determine whether Depositor's obligations to Secured Party are in default or whether Secured Party is entitled, under any separate agreement between Secured Party and Depositor, to give Disposition Instructions or any other instructions or a Notice of Exclusive Control relating to the Account. Fiscal Agent shall have no responsibility or liability to Secured Party for complying with any Disposition Instruction, order or other instruction, whether oral or written, concerning the Account, except to the extent such compliance would violate (i) Section 4(e) hereof, or (ii) written instructions or orders previously received from Secured Party, but only to the extent Fiscal Agent had reasonable opportunity to act thereon. Fiscal Agent shall not have any liability to Depositor or Secured Party for losses or damages resulting from any failure to comply with Disposition Instructions relating to the Account or delay in complying with any Disposition Instruction or any other instruction if (i) compliance with any Disposition Instruction or any other instruction would require Fiscal Agent to violate any then-existing injunction or order of any court of competent jurisdiction, including without limitation in any bankruptcy case under Title 11 of the United States Code, or (ii) the failure or delay is due to circumstances beyond Fiscal Agent's reasonable control. Without limiting the foregoing, in no event shall Fiscal Agent have any liability, directly or indirectly, for any special, indirect, punitive, exemplary or consequential losses or damages, including without limitation lost profits, whether or not any claim for such

losses or damages is based on tort or contract or Fiscal Agent knew or should have known the likelihood of such losses or damages in any circumstances.

c. Fiscal Agent may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party. Without limiting the foregoing, Fiscal Agent may (but shall not be obligated to) require that Secured Party or Depositor from time to time deliver to Fiscal Agent such documentation as Fiscal Agent may reasonably request to evidence the authority of those entities or individuals purporting to give Disposition Instructions or any other instructions on behalf of Secured Party or Depositor to Fiscal Agent hereunder.

3. Depositor's Responsibilities.

a. Reserve Fund. The Funding Agreement will require Depositor to deposit, and maintain in the Account, at a minimum, a reserve in the amount equal to two (2) semiannual principal payments (the "Reserve Funds") for the Loan. In order to accumulate Reserve Funds, Depositor shall make deposits into the Account in an amount and as frequent as instructed by Secured Party. Secured Party shall provide a copy of all such instructions to Fiscal Agent substantially in the form attached hereto as Exhibit "A".]

b. Interest Only Payments. Prior to completion of the Project, Depositor shall deposit into the Account an amount equal to all unpaid accrued interest, as more particularly described on each Invoice. Depositor shall make all required deposits no later than 15 days after receipt of an Invoice from Secured Party. Secured Party shall provide a copy of each Invoice to Fiscal Agent.

c. Principal and Interest Payments. After completion of the Project, Depositor will be required to deposit funds into the Account in an amount and as frequently as instructed by Secured Party in order to sufficiently meet Depositor's semiannual principal plus interest payment obligations, as required by each Invoice. Secured Party shall provide a copy of all such instructions to Fiscal Agent substantially in the form attached hereto as Exhibit "A".

4. Control of Account.

a. Depositor's Right to Give Disposition Instructions. Until (i) Secured Party has given Fiscal Agent the Notice of Exclusive Control substantially in the form of Exhibit "B" attached hereto, and (ii) the Outside Time has occurred, Depositor shall be entitled to initiate Disposition Instructions from the Account, provided such Disposition Instructions have been authorized by Secured Party. Secured Party's authorization pursuant to this Section 4(a) shall be limited to the payment of Invoices.

b. Secured Party's Right to Give Disposition Instructions. Notwithstanding any separate agreement Depositor may have with Fiscal Agent, Secured Party shall be entitled at any time to give Disposition Instructions to Fiscal Agent, or instructions as to any other matters relating to the Account, all without further consent of Depositor. Fiscal Agent shall comply with, and is fully entitled to rely upon, any Disposition Instructions or any such instructions from Secured Party as to any other matters relating to the Account, even if such instructions are contrary to any instructions or demands that Depositor may give to Fiscal Agent.

c. Effect of Instructions from Secured Party. Secured Party's rights under this Agreement to give Fiscal Agent Disposition Instructions or instructions as to any other matters relating to the Account includes without limitation the power to give stop payment orders for any items being presented to the Account for payment. Depositor confirms that Fiscal Agent should follow all such instructions from Secured Party even if the result of following any such instructions is that Fiscal Agent dishonors items presented for payment from the Account. Depositor further confirms that Fiscal Agent will have no liability to Depositor for the wrongful dishonor of such items resulting from Fiscal Agent's compliance with any such instructions from Secured Party.

d. After the Outside Time. After the Outside Time, Fiscal Agent will no longer comply with Depositor's communications, including Depositor initiated Disposition Instructions.

e. Notice of Exclusive Control. Fiscal Agent will comply with the Notice of Exclusive Control, and with any Disposition Instructions originated by Secured Party either before any Notice of Exclusive Control, together with the Notice of Exclusive Control or following Secured Party's Notice of Exclusive Control, in each case (i) without Depositor's further consent, and (ii) even if following the instruction results in Fiscal Agent otherwise not complying with Depositor's communications. The Notice of Exclusive Control may be rescinded or otherwise modified by Secured Party, but such rescission or modification shall not be effective against Fiscal Agent unless and until written notice of such rescission or modification shall be delivered to and acknowledged by Fiscal Agent.

5. Priority of Secured Party's Security Interest; Rights Reserved by Fiscal Agent. Fiscal Agent agrees that all of its present and future rights against the Account are subordinate to Secured Party's security interest therein; provided, however, that Secured Party agrees that nothing herein subordinates or waives any of, and that Fiscal Agent expressly reserves all of, Fiscal Agent's present and future rights (whether described as rights of setoff, banker's lien, chargeback or otherwise, and whether available to Fiscal Agent under the law or under any other agreement between Fiscal Agent and Depositor concerning the Account, or otherwise) with respect to: (a) items deposited to the Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of return of any such item or the occurrence or timeliness of any drawee's notice of non-payment of such items; (b) claims of breach of the applicable Uniform Commercial Code's transfer or presentment warranties made against Fiscal Agent in connection with items deposited to the Account; (c) any automated clearing house (also known as "ACH") entry credited to the Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or adjustment; (d) any credit to the Account from a merchant card transaction, against which a contractual demand for chargeback has been made; (e) any credit to the Account made in error; and (f) Fiscal Agent's usual and customary charges for services rendered in connection with the Account, to the extent that, in each case, Depositor has not separately paid or reimbursed Fiscal Agent therefor. Items, entries, and transactions described in clauses (a) through (e) of this Section are collectively referred to as "Returned Items."

6. Statements. In addition to the original deposit account statement for the Account which is provided to Depositor, Fiscal Agent will send a duplicate statement to Secured Party.

Depositor hereby authorizes Fiscal Agent to provide any additional information relating to the Account to Secured Party upon Secured Party's request without Depositor's further consent.

7. Notice of Adverse Claims; Record of Security Interest.

a. Fiscal Agent represents and warrants to Secured Party that Fiscal Agent has not received notice of any currently effective lien or encumbrance on or other claim to the Account from any other person or entity and has not entered into, and covenants with Secured Party that it will not enter into, any agreement with any other person or entity by which Fiscal Agent is obligated to comply with instructions from such other person or entity as to the disposition of funds from the Account or other dealings with the Account. Fiscal Agent will use commercially reasonable efforts, subject to applicable law, to notify Secured Party promptly if any other person or entity claims a property interest in the Account. To the extent that it gives notice to Depositor, Fiscal Agent will promptly notify Secured Party if any other person or entity claims that it has a property interest in the Account.

b. Fiscal Agent further represents and warrants to Secured Party that Fiscal Agent has marked its books and records to indicate that Secured Party has the right to control the Account as set forth herein.

8. Returned Items. Depositor and Secured Party understand and agree that Fiscal Agent will collect the amount of each Returned Item by debiting the Account. Depositor agrees to pay the amount of any Returned Item immediately upon demand to the extent that there are not sufficient funds in the Account to cover such amount on the day of the debit. Secured Party agrees to pay any such amount that is not paid in full by Depositor within 10 days after demand on Depositor by Fiscal Agent up to the amount of the proceeds received by Secured Party from the corresponding Returned Item. Fiscal Agent agrees that any demand upon Secured Party for such amount shall be made within 90 days after Secured Party's receipt of such proceeds. To the extent that Fiscal Agent is precluded from making demand or giving notice hereunder by reason of the commencement of a bankruptcy or similar proceeding, then such demand or notice shall be deemed to have been made or given at the commencement of such proceeding.

9. Costs; Indemnity.

a. Depositor will be responsible for Fiscal Agent's customary charges for services rendered in connection with the Account.

b. Depositor will indemnify Fiscal Agent and its officers, directors, employees and agents against any and all losses, claims, liabilities and expenses arising out of this Agreement (including without limitation all fees and costs incurred by Fiscal Agent in complying with Disposition Instructions or any other instructions or requests given by Depositor hereunder and reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the losses, claims, liabilities or expenses are determined by a court of competent jurisdiction to be caused by Fiscal Agent's gross negligence or willful misconduct.

c. Secured Party will indemnify Fiscal Agent and its officers, directors, employees and agents against losses, claims, liabilities and expenses arising out of Fiscal Agent's compliance with Disposition Instructions or any other instructions or requests from Secured

Party in connection with this Agreement (including without limitation reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the losses, claims, liabilities or expenses are determined by a court of competent jurisdiction to be caused by Fiscal Agent's gross negligence or willful misconduct.

d. To the extent that a given claim, liability or expense shall arise out of Fiscal Agent's following of a Disposition Instruction or any instruction or request from Secured Party in connection with this Agreement, Depositor's and Secured Party's indemnity obligations under this Section 9 with respect to such claim, liability or expense shall be joint and several. The obligations of Depositor and Secured Party under this Section 9 shall survive the termination of this Agreement and the resignation or removal of Fiscal Agent.

10. Termination; Survival.

a. Secured Party may terminate this Agreement by written notice to Fiscal Agent and Depositor. Depositor may not terminate this Agreement except with written consent of Secured Party and on 30 days' prior written notice to Secured Party and Fiscal Agent.

b. This Agreement may be terminated by Fiscal Agent only as follows: (i) immediately upon notice to the other parties if Fiscal Agent becomes obligated to terminate this Agreement or to close the Account under any statute, rule or regulation or any order, judgment, decree or injunction, or a garnishment, restraining notice or other legal process, directing, or prohibiting or otherwise restricting, the disposition of the funds in the Account, binding upon Fiscal Agent; (ii) without limiting the foregoing, with written consent of Secured Party which may not be unreasonably withheld but may be conditioned on Secured Party's ability to transfer the Account to a financial institution that agrees to substantially undertake Fiscal Agent's obligations under this Agreement.

c. This Agreement will terminate upon Fiscal Agent's receipt of written notice from Secured Party expressly stating that Secured Party's security interest in the Account has terminated.

d. Sections 2 ("Fiscal Agent's Responsibility"), 8 ("Returned Items") and 9 ("Costs; Indemnity") will survive termination of this Agreement and the resignation or removal of Fiscal Agent.

11. Governing Law.

a. Fiscal Agent represents and warrants to Secured Party that any account agreement(s) between Fiscal Agent and Depositor relating to the establishment and general operation of the Account will expressly provide that such account agreement(s) are governed by the law of the State of California. Fiscal Agent covenants that it will not, without Secured Party's prior written consent, amend those account agreement(s) to change their governing law or to provide that secured transactions relating to the Account are governed by the law of another jurisdiction.

b. This Agreement will be governed by the internal laws of California.

12. Entire Agreement. This Agreement is the entire agreement among the parties regarding the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter. To the extent that any provision in this Agreement conflicts with any provision in any other agreement between Fiscal Agent and Depositor, the provision in this Agreement shall control.

13. Amendments. No amendment of this Agreement will be binding unless it is in writing and signed by Depositor, Secured Party and Fiscal Agent, and no waiver of any right under this Agreement will be binding unless it is in writing and signed by the party to be charged.

14. Severability. To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

15. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of Fiscal Agent, Secured Party and Depositor and their respective successors and assigns. Notwithstanding the foregoing, neither Depositor nor Fiscal Agent shall assign, transfer or delegate any of its rights or obligations under this Agreement without prior written consent of Secured Party, which may be withheld at its sole discretion. Any banking association or corporation into which Fiscal Agent may be merged, converted or with which Fiscal Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Fiscal Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of Fiscal Agent shall be sold or otherwise transferred, shall succeed to all Fiscal Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding

16. Notices. All notices, instructions or other communications to a party under this Agreement shall be in writing and shall be sent to the party's address for notices set forth below or to such other address as shall be designated by such party by notice given to the other parties, and, except as otherwise expressly provided for herein, will be effective on receipt.

17. No Agency, Etc. Nothing contained in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between Depositor, Secured Party and Fiscal Agent.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

The foregoing is hereby acknowledged and agreed to, effective as of the date first set forth above.

DEPOSITOR:

_____,
a _____

By: _____
Name: _____
Title: _____

Address for notices:

_____
_____
Attention: _____
Telephone: _____
Facsimile: _____

[Signatures continue on following page.]

SECURED PARTY:

State of California
Department of Public Health

By: _____
Name: _____
Title: _____

Address for notices:

State of California
Department of Public Health,
Division of Drinking Water and Environmental Management
P.O. Box 997377, MS 7418
Sacramento, California 95899-7377
Telephone: _____
Facsimile: _____

[Signatures continue on following page.]

FISCAL AGENT:

_____,
a _____

By: _____
Name: _____
Title: _____

Address for notices:

_____
_____
Attention: _____
Telephone: _____
Facsimile: _____

Office of Fiscal Agent where the Account is maintained:

_____
_____
Attention: _____
Telephone: _____
Facsimile: _____

EXHIBIT "A"

FORM INSTRUCTIONS FOR DEPOSITS

_____
[Address]
Attn: _____

[Name of Depositor]
[Address]
Attn: _____

Re: Instruction for Deposits

Ladies and Gentlemen:

Pursuant to Section 3 of that certain Fiscal Services and Deposit Account Control Agreement dated as of _____, 20__, by and among **[INSERT NAME OF DEPOSITOR]** (the "Depositor"), **[INSERT NAME OF FISCAL AGENT]** and us (the "Control Agreement") and in order to satisfy Depositor's principal and interest payments under the Loan, Depositor shall deposit $_____.__ into the Account beginning _____, 20__, and every **[OPTION:** one month **OR** three month **OR** six month] anniversary thereafter. Capitalized terms used in these instructions shall have the meanings ascribed to them in the Control Agreement.

[USE ONLY IF RESERVE REQUIRED: *Pursuant to Section 3(a) of the Control Agreement and in order to satisfy the Reserve Fund, Depositor is instructed to deposit into account no. _____ (the "Account") $_____.__* ***[REMOVE IF LUMP SUM DEPOSIT:*** *beginning] on _____, 20__* ***[REMOVE IF LUMP SUM DEPOSIT:****, and on every _____ anniversary thereafter]. Depositor shall continue to make all required deposits until the Account has accumulated an amount equal to two (2) semiannual principal payments for the Loan.]*

Very truly yours,

State of California
Department of Public Health

By: _____
Name: _____
Title: _____

EXHIBIT "B"

FORM NOTICE OF EXCLUSIVE CONTROL

_____
[Address]
Attn: _____

Re: Notice of Exclusive Control

Ladies and Gentlemen:

This is the Notice of Exclusive Control as defined in that certain Fiscal Services and Deposit Account Control Agreement dated _____, 20__, among you, us and **[INSERT DEPOSITOR'S FULL NAME]** (the "Depositor") (as currently in effect , the "Control Agreement"). A copy of the Control Agreement as fully executed is attached. Capitalized terms used in this Notice of Exclusive Control have the meanings given them in the Control Agreement.

This Notice of Exclusive Control directs Fiscal Agent to no longer to comply with Depositor's Disposition Instructions.

Very truly yours,

State of California
Department of Public Health

By: _____
Name: _____
Title: _____

ATTACHMENT 2

DEPOSIT ACCOUNT MAINTENANCE AGREEMENT

1. Pursuant to this DEPOSIT ACCOUNT MAINTENANCE AGREEMENT (this "Agreement"), _____ ("Depositor") hereby covenants to the State of California Department of Public Health ("State") that it will establish and maintain the deposit account(s) described below (individually and collectively, the "Accounts") for the purpose of satisfying its obligations under that certain Funding Agreement between Depositor and State dated as of _____, 20__, Number _____ (the "Funding Agreement"). Additionally, Depositor agrees not to close the Accounts prior to the termination or expiration of the Funding Agreement.

2. The Accounts which are the subject of this Agreement are described below: (NOTE: "A" below must be completed. If the Funding Agreement provides loan funds, subparts B and C below must also be completed.)

   A. Account for deposit of funds received from State:
   Bank _____ Phone No. _____
   Mailing Address _____
   Account and/or Ledger No. _____
   Account and/or Ledger No. _____

   B. Account for deposit of ratepayer payments, prior to deposit with Fiscal Agent:
   Bank _____ Phone No. _____
   Mailing Address _____
   Account and/or Ledger No. _____
   Account and/or Ledger No. _____

   C. Account for deposit held by Fiscal Agent:
   Bank _____ Phone No. _____
   Mailing Address _____
   Account and/or Ledger No. _____
   Account and/or Ledger No. _____

3. Depositor will notify State in writing immediately if any third party obtains or attempts to obtain a lien or other interest in any of the Accounts by consent, attachment, execution or other form of legal process.

_____
Depositor

By: _____ Date: _____

Name: _____

Mailing Address _____

_____

Phone No.: _____

ATTACHMENT 3

State of California

DEPARTMENT OF PUBLIC HEALTH

Safe Drinking Water State Revolving Fund (DWSRF)

BUDGET AND EXPENDITURE SUMMARY

☐ LOAN FUNDS

☐ FORGIVENESS OF PRINCIPAL/GRANT FUNDS

☐ NEGATIVE INTEREST FUNDS

☐ OTHER SOURCE OF FUNDS_____

Page _____ of _____

Name of Water System		Funding Agreement Number	
Contact Person	DUNS Number	Telephone Number	Email Address
Claim Number	For Period From (Month/Day/Year)	To (Month/Day/Year)	

LINE ITEM NO.	DESCRIPTION	BUDGET AMOUNT	TOTAL PRIOR CLAIMS	CURRENT CLAIM	TOTAL CLAIMS TO DATE	BALANCE
SUBTOTAL THIS PAGE						
SUBTOTAL PAGE						
SUBTOTAL PAGE						
TOTAL						

REVIEWED BY SUPPLIER'S AUTHORIZED REPRESENTATIVE *(Print Name, Title, RCE Number)*		
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH APPROVAL - District Engineer *(Print Name)*	SIGNATURE	DATE

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

Safe Drinking Water Funding Programs

BUDGET AND EXPENDITURE (B&E) SUMMARY

Page _____ of _____

SUMMARY FOR COMBINED FUNDING SOURCES - OVERALL TOTAL PROJECT COSTS

(for use with multiple funding sources only)

Name of Water System		Funding Agreement Number	
Contact Person	DUNS Number	Telephone Number	Email Address
Claim Number	For Period From (Month/Day/Year)	To (Month/Day/Year)	

LINE ITEM #	DESCRIPTION	FUNDING SOURCE #1 *fill in:* _____ (ex. ARRA)	FUNDING SOURCE #2 *fill in:* _____ (ex. SRF)	FUNDING SOURCE #3 *fill in:* _____ (ex. PROP 84)	FUNDING SOURCE #4 *fill in:* _____ (ex. PROP 50)	FUNDING SOURCE #5 *fill in:* _____ (ex. SUPPLIER'S COST)	TOTAL
SUBTOTAL THIS PAGE							
SUBTOTAL PAGE							
SUBTOTAL PAGE							
TOTAL							

REVIEWED BY SUPPLIER'S AUTHORIZED REPRESENTATIVE *(Print Name, Title)*		
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH APPROVAL - District Engineer *(Print Name)*	SIGNATURE	DATE

State of California

DEPARTMENT OF PUBLIC HEALTH

Safe Drinking Water State Revolving Fund (SDWSRF) Program

BUDGET AND EXPENDITURE SUMMARY

☐ LOAN FUNDS

☐ FORGIVENESS OF PRINCIPAL FUNDS

☐ OTHER SOURCE OF FUNDS_____

☐ NEGATIVE INTEREST FUNDS

Page _____ of _____

Name of Water System		Funding Agreement Number	
Contact Person	DUNS Number	Telephone Number	Email Address
Claim Number	For Period From (Month/Day/Year)	To (Month/Day/Year)	

LINE ITEM NO.	DESCRIPTION	BUDGET AMOUNT	TOTAL PRIOR CLAIMS	CURRENT CLAIM	TOTAL CLAIMS TO DATE	BALANCE
SUBTOTAL THIS PAGE						
SUBTOTAL PAGE						
SUBTOTAL PAGE						
TOTAL						

REVIEWED BY SUPPLIER'S AUTHORIZED REPRESENTATIVE *(Print Name, Title)*	SIGNATURE	DATE
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH APPROVAL - District Engineer *(Print Name)*	SIGNATURE	DATE

ATTACHMENT 4

State of California

Department of Public Health

Safe Drinking Water State Revolving Fund (DWSRF)

CLAIM FOR REIMBURSEMENT (PUBLIC)

See instruction sheet.

☐ **Forgiveness of Principal/Grant Funds** ☐ **Negative Interest Funds**

☐ **Other Source of funds** _____ ☐ **Loan Funds**

Part A

DUNS #: _____

Name of Water System			
Address			
Phone Number	Fax Number	Funding Agreement No.	
Claim Number	For Period From (Month/Day/Year)		To (Month/Day/Year)

Part B Expenditure Summary

Budget Line Item Number	Attach-ment Number	Description	Total Project Expenditures	Matching Funds/Supplier's Cost/Other Fund Source(s)	Funds Requested

PART C

1. Total this claim - *Do not request reimbursement for funds that won't be immediately disbursed to the contractor.*			
2. Total all prior claims			
3. Total expenditures to date (1 + 2 above)			
4. DWP Funding Agreement Amount			
5. Total funds obligated (Same as 3)			
6. Funds still available (4 - 5 above)			

Prepare an Original and Two (2) Copies.

Original plus one copy:
Dept. of Public Health, Safe Drinking Water Office
P.O. Box 997377, MS 7418 / Sacramento, CA 95899-7377

One copy to: CDPH District Engineer

FOR STATE USE ONLY

Your claim packet must include original "wet" signatures from the person(s) designated in your resolution. Please sign in blue ink and make photocopies of the signed originals.

Please submit the original and one copy of the entire claim package to:

Department of Public Health, Safe Drinking Water Office
P.O. Box 997377, MS 7418
Sacramento, CA 95899-7377

In addition, a full copy of the claim package must be sent to your CDPH District Office.

Instructions for completing "CLAIM FOR REIMBURSEMENT (PUBLIC OR PRIVATE)"

INDICATE WHICH FUNDING SOURCE YOU ARE CLAIMING
Choose from the menu in the heading and check the appropriate box below it.

PART A

Name of Water System
The name should be identical to the name used in the Funding Agreement with the State.

Funding Agreement Number
The number is on the Funding Agreement (*Ex. AR09NI00*)

Claim Number
Submit no more than one claim per month. The format for numbering claims will be in sequence (Claim No. 1, No. 2, etc.)

PART B - Expenditure Summary

Line Item Number
This number corresponds to the line items on your Budget and Expenditure Summary form as well as the corresponding Itemized forms.

Attachment Number
Numerically identify each attachment, corresponding to each Claim for Reimbursement (Itemized) form, found in the upper right hand corner.

Description
Must match the B&E line item description but may include additional information, such as the name of the contractor.

Project Expenditures
Enter the total dollar amount incurred for the line item this claim period. (Include costs funded by SRF* as well as non-SRF* sources).

Matching Funds/Supplier's Cost/Other Fund Source(s)
If required by Funding Agreement to demonstrate matching funds, enter the dollar amount covered by non-SRF* sources for this claim.

Funds Requested
The dollar amount of SRF* funds requested for each line item.
If your project is funded from multiple sources, you must submit to CDPH copies of all payment requests (claims) for each funding source, including support documentation.

PART C - Totals

1. Sum of project expenditures and SRF* funds requested from the columns in Part B.
2. Total all prior claims - *Do not include this claim*.
3. Sum of Items 1 (Total this Claim) and 2 (Total all prior claims).
4. SRF* amount from the Funding Agreement.
5. Same as item 3, the sum of Items 1 and 2.
6. Funds still available - Item 4 minus Item 5. This amount must be equal to or greater than zero.

The totals in Part C should match the totals on the Claim B&E.

DO NOT WRITE IN THE BLOCKS MARKED "FOR STATE USE ONLY".

If additional space is required use a second Claim for Reimbursement form and identify it as "Page Two" in the upper right hand corner.
Show a total only for the last Claim for Reimbursement form.

Instructions for submitting "ITEMIZED CLAIM FORM"

Submit an itemized form for each contractor whose service is being funded this claim.

PART A

FOR CONSTRUCTION COSTS ONLY - Date of Completion
The expected completion date for this contractor's portion of the project.

FOR CONSTRUCTION COSTS ONLY - Amount of Contract
The amount of the contract for this contractor's portion of the project.

If any revisions have been made to the completion date or contract amount, note them in the space provided.
The CDPH District Office must approve of any changes.

Dates of Claims
The date range for this claim (from the Public/Private claim form).

PART B

Budget Line Item
This number corresponds to the line items on your claim (Public/Private) and Budget and Expenditure Summary form.

Contract Items (Unit, Quantity and Unit Price)
"See Attached Invoice # [enter corresponding invoice number or range]."
Alternatively, identify each item by its basic description.

This Period

Quantity and Amount
Total amount for this contractor submitted this claim.

Total to Date

Quantity and Amount
Total amount for this contractor to date (entire project).

PART C

Amount Earned
Total of "This Period" and "Total to Date" columns in Part B.

Amount Due (This Period) and Amount Due (Total to Date)
Enter the amount of funds requested this claim.

Previous Payments
Enter the sum of previous payments related to this contractor in the Total to Date column.

FOR CONSTRUCTION COSTS ONLY - Estimated Percentage
Total percentage of work completed by this contractor for this contract, required.

FOR CONSTRUCTION COSTS ONLY - Contractor's Progress
Indicate if contractor is on schedule. If "no," explain.

Part D
D2 and D3 must always be signed by the personnel designated in the resolution. Part D2 is always signed by a registered civil engineer unless otherwise approved in writing by State.
Part D1 is signed FOR CONSTRUCTION COSTS ONLY.

DO NOT REQUEST REIMBURSEMENT FOR FUNDS THAT WON'T BE IMMEDIATELY DISBURSED TO THE CONTRACTOR, INCLUDING RETENTION.

****These Instructions apply for all CDPH Drinking Water Program fund sources: SRF, ARRA, Prop 50, Prop 84.***

State of California

Department of Public Health

Safe Drinking Water State Revolving Fund (DWSRF)

ITEMIZED CLAIM FORM

See instruction sheet.

☐ Loan Funds

☐ Forgiveness of Principal/Grant Funds

☐ Other Source of Funds _____

☐ Negative Interest Funds _____

Attachment No. ____ of ____

Claim No. _____

Funding Agreement No. _____

F.A. Execution Date _____

PART A

NAME OF CONTRACTOR		
NAME OF ENTITY		TELEPHONE NUMBER
DATE OF COMPLETION FOR THIS CONTRACTOR Original _____ Revised _____	AMOUNT OF CONTRACT FOR THIS CONTRACTOR Original _____ Revised _____	DATES OF CLAIMS From _____ To

PART B

BUDGET LINE ITEM	CONTRACT ITEMS			THIS PERIOD		TOTAL TO DATE	
	UNIT	QUANTITY	UNIT PRICE	QUANTITY	AMOUNT	QUANTITY	AMOUNT

PART C

	THIS PERIOD	TOTAL TO DATE
AMOUNT EARNED	$ -	$ -
PREVIOUS PAYMENTS		$
AMOUNT DUE	$ -	$ -

ESTIMATED PERCENTAGE OF JOB COMPLETED (applicable for construction costs only)	IS CONTRACTOR'S CONSTRUCTION PROGRESS ON SCHEDULE? (applicable for construction costs only)
_____ %	□YES □ NO EXPLAIN:

PART D

1. Certification of Contractor *(applicable for construction costs only)*

According to the best of my knowledge and belief, I certify that all items and amounts shown on the foregoing Claim for Reimbursement (Itemized) are correct; that all the work has been performed and/or material supplied in full accordance with the requirements of the referenced Funding Agreement, and/or duly authorized deviations, substitutions, alternations, and/or additions; that the foregoing is a true and correct statement of the contract account up to and including the last day of the period covered by this claim; that no part of the "Balance Due This Payment" has been received and that the undersigned and his subcontractors have complied with the nondiscrimination provisions of the Funding Agreement.

_____ *Signature* _____ *Date*

_____ *Name (Print)* _____ *Title*

2. Certification of Individual Authorized Representative to Sign Budget and Expenditure Summary

I certify that I have checked and verified the foregoing Claim for Reimbursement (Itemized); that to the best of my knowledge and belief it is a true and correct statement of work performed and/or material included in this claim; has been inspected by me and/or by my duly authorized representative or assistants and that it has been performed and/or supplied in full accordance with requirements of the referenced contract; and that partial payment claimed and requested by the contractor is correctly computed on the basis of work performed and/or material supplied to date.

_____ *Signature* _____ *Date*

_____ *Name (Print)* _____ *Position Title or Registration Number*

3. Request for Payment by Entity

The construction of the project is progressing satisfactorily and to the best of my knowledge the amounts contained in the foregoing Itemized Claim Form are true and correct statements of actual costs incurred for work performed and I hereby request payment from the fund indicated on the Claim for Reimbursement form in the amount of $ - for reimbursement of eligible project costs estimated above.

_____ *Signature* _____ *Date*

_____ *Name (Print)* _____ *Position Title or Registration Number*

ATTACHMENT 5

Final Release

Definitions: As used in this release "Funding Agreement" refers to that certain State of California Department of Public Health Funding Agreement identified in paragraph 2 below; "final invoice" refers to "final claim" as used in said Funding Agreement and "Supplier" refers to the party identified as "Supplier" in said Funding Agreement.

Instructions to Supplier:

With your final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind Supplier. The additional copy may bear photocopied signatures.

2. Submission of Final Invoice

Pursuant to Funding Agreement number _____ entered into between the State of California Department of Public Health (CDPH) and the Supplier (identified below), the Supplier does acknowledge that final payment has been requested via invoice number _____, in the amount of $_____ and dated _____.

3. Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number referenced above, Supplier does hereby release and discharge the State, its officers agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced Agreement.

4. Repayments Due to Audit Exceptions / Record Retention

By signing this form, Supplier acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses Supplier agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced Agreement must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said Funding Agreement.

5. Other Issues

By signing this form, Supplier further agrees, in connection with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced Funding Agreement, including, but not limited to, those provisions relating to notification to the State and related to resolution of disputes and the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

_____
Supplier's Legal Name (as on Agreement)

_____ Date: _____
Signature of Supplier

_____
Printed Name/Title of Person Signing

CDHS Distribution: Accounting (Original) Program(Copy): Division of Drinking Water and Environmental Management

ATTACHMENT 6

Supplier's Certification of Project Completion
Project #_____
Funding Agreement # SRF_____

I _____ certify the _____(water system)_____ Project #_____ is complete and ready for final inspection.

Attached is a certificate from the project's licensed civil engineer (or DHS approved authorized representative) certifying the project is complete and conforms to the approved plans and specifications.

_____ _____
Project Engineer Date

ATTACHMENT 7

Davis-Bacon Wage Rate Requirements

Preamble

With respect to the Safe Drinking Water State Revolving Fund (SDWSRF), the United States Environmental Protection Agency (EPA) provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the SDWSRF funds. For these types of subrecipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring the subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of subrecipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II5.

I. Requirements For Subrecipients That are Governmental Entities:

The following terms and conditions specify how State recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance with respect to State recipients and subrecipients If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact the EPA Region 9 Davis-Bacon Coordinator at (415) 947-8000 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/esa/whd/recovery/

1. Applicability of the DB prevailing wage requirements.

DB prevailing wage requirements apply to contracts in excess of $2,000 which are entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the SDWSRF that is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The State recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the SDWSRF that is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to thelabor standards provisions of any of the acts listed in 29 CFR 5.1, the following clauses:

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of

laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State recipient's award official. The State recipient's award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State recipient's award official or will notify the State recipient's award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State recipient's award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination

or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding*. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA , the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work

performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees.*

(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the

contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity*. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements*. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination; debarment*. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements*. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards*. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility*.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis- Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. **Contract Provision for Contracts in Excess of $100,000.**

(a) *Contract Work Hours and Safety Standards Act*. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this

paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements*. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages*. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social

security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to

apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/esa/contacts/whd/america2.htm.

II. Requirements For Subrecipients That Are Not Governmental Entities

The following terms and conditions specify how State recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact EPA Region 9 Davis-Bacon Coordinator at (415) 947-8000 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/esa/whd/recovery/

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. *Applicability of the Davis- Bacon (DB) prevailing wage requirements.*

DB prevailing wage requirements apply to contracts in excess of $2,000 which are entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the SDWSRF that is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1 If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

2. *Obtaining Wage Determinations.*

(a) Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the subrecipient obtains its proposed wage determination, it must submit the wage determination to (insert contact information for State recipient DB point of contact for wage determination) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar

instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The State recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the following clauses:

(1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly

rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding*. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records*.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and

certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA , the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable

wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees.*

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(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates

(expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity*. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements*. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment*. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements*. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards*. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility*.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis- Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) *Contract Work Hours and Safety Standards Act*. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in

addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements*. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages*. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the

contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to

apprenticeship and training programs approved by either the U.S. Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/esa/contacts/whd/america2.htm.

State of California—Health and Human Services Agency
California Department of Public Health

MARK B HORTON, MD, MSPH
Director

EDMUND G. BROWN JR.
Governor

Attachment 8

CDPH-SDWSRF
Minority Business Enterprise - Women's Business Enterprise
Goals for Participation
June 2010

The U.S. Environmental Protection Agency, Region 9, and the California Department of Public Health (CDPH), Safe Drinking Water State Revolving Fund, have adopted the following goals for participation of Minority Business Enterprises and Women's Business Enterprises in designated SDWSRF funded projects, including all American Recovery and Reinvestment Act projects funded by CDPH.

Procurement Category	MBE Participation Goals	WBE Participation Goals
Construction	14%	6%
Supplies	22%	14%
Services	31%	32%
Equipment	13%	19%

Note: Disadvantaged Business Enterprise requirements, which supersede previous Minority Business Enterprise – Women's Business Enterprise requirements, continue to include these participation goals. Questions concerning SDWSRF implementation of the U.S. Environmental Protection Agency Regulations for Disadvantaged Business Enterprises in Programs should be sent to sdwsrf@cdph.ca.gov.

Division of Drinking Water and Environmental Management
P.O. Box 997377, MS 7416, 1616 Capitol Avenue, 2nd Floor, Sacramento, CA 95899-7377
(916) 449-5600 (916) 449-5655 Fax
Internet Address: www.cdph.ca.gov

Attachment 9

DISADVANTAGED BUSINESS ENTERPRISE INFORMATION FORM

WATER SYSTEM NAME:	WATER SYSTEM NUMBER-PROJECT NUMBER:
PROJECT DESCRIPTION:	PROJECT LOCATION:

PRIME CONTRACTOR INFORMATION

NAME/ADDRESS: Name of firm Contact person Address, City, Zip Phone Email ☐ DBE ☐ MBE ☐ WBE ☐ OTHER	TYPE OF CONTRACT ☐ ARCHITECT/ENGINEER(A/E) ☐ CONSTRUCTION ☐ SUPPLIER/SERVICE (S/S) AMOUNT OF CONTRACT/BID: $

SUBCONTRACTOR INFORMATION

☐ DBE ☐ MBE ☐ WBE ☐ OTHER ☐ SUBCONTRACTOR ☐ SUPPLIER/SERVICE ☐ JOINT VENTURE ☐ BROKER TYPE OF CONTRACT CONTRACT AMOUNT $	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone Email
☐ DBE ☐ MBE ☐ WBE ☐ OTHER ☐ SUBCONTRACTOR ☐ SUPPLIER/SERVICE ☐ JOINT VENTURE ☐ BROKER TYPE OF CONTRACT CONTRACT AMOUNT $	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone Email
☐ DBE ☐ MBE ☐ WBE ☐ OTHER ☐ SUBCONTRACTOR ☐ SUPPLIER/SERVICE ☐ JOINT VENTURE ☐ BROKER TYPE OF CONTRACT CONTRACT AMOUNT $	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone Email

GOALS FOR MBE & WBE PARTICIPATION

	% MBE	% WBE
Construction	14%	6%
Equipment	13%	19%
Services	31%	32%
Supplies	22%	14%

FORM COMPLETED BY:

NAME	TITLE	PHONE
SIGNATURE	DATE	EMAIL

FAILURE TO COMPLETE AND SUBMIT THIS FORM WITH BID -WILL CAUSE THE BID TO BE REJECTED AS NON-RESPONSIVE

☐ Additional pages attached

State of California—Health and Human Services Agency
California Department of Public Health

MARK B HORTON, MD, MSPH
Director

EDMUND G. BROWN JR.
Governor

SDWSRF Guidance to Public Water Systems

Key Elements for Implementation of Federal Requirements Disadvantaged Business Enterprise (DBE)

June 2010

The California Safe Drinking Water State Revolving Fund SDWSRF program must be implemented in a manner consistent with the federal act. Among the requirements of the federal act is that designated projects conform with additional federal "cross cutting" laws, including the Disadvantaged Business Enterprise regulations. The objective of the federal DBE requirement is to provide meaningful opportunities for these businesses to participate in contracts and subcontracts for SDWSRF funded projects. The mechanism through which the SDWSRF funding recipient will fulfill this requirement is by incorporating DBE requirements in the bid solicitation for construction of the funded project, maintaining related documentation, and reporting to CDPH on these efforts.

I. Bid Solicitation Phase

The SDWSRF funding agreement for these designated will include DBE participation goals. Performance of **good faith effort** by the funding recipient and its prime contractor is the principal mechanism of measuring compliance with the DBE requirement. Funding recipients and prime contractors who document their meaningful actions to comply with good faith effort requirements will have met the requirement, rather than the participation level achieved.

Six Step Good Faith Effort [GFE]

1. Include disadvantaged business enterprises on solicitation lists;
2. Assure that disadvantaged business enterprises are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged business enterprises.

Division of Drinking Water and Environmental Management
P.O. Box 997377, MS 7416, 1616 Capitol Avenue, 2nd Floor, Sacramento, CA 95899-7377
(916) 449-5600 (916) 449-5655 Fax
Internet Address: www.cdph.ca.gov

DBE Requirements Apply to most SDWSRF funded projects. Projects are exempted from DBE (and other cross cutting federal requirements) based on criteria identifies in the annual California SDWSRF Intended Use Plan, because these projects are to be funded with State match monies and SDWSRF repayments or interest.

4. Establish delivery schedules, when the requirements of the work permit, which will encourage participation by disadvantaged business enterprises;
5. Use the services of the Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and the California Unified Certification Program of the California Department of Transportation, as appropriate; and,
6. If any contractor awards subagreements, require the contractor to take the affirmative steps in paragraphs (1) through (5) of this paragraph.

As required by Federal DBE regulations, Supplier must circulate bid solicitation(s) for the project for a minimum of 30 days unless CDPH concurrence with a shorter circulation period is obtained. [SDWSRF American Recovery and Reinvestment Act [ARRA] funded projects must circulate bid for no less than 15 days].

Supplier submits the Good Faith Effort documentation received from the selected prime contractor bidder to CDPH. The water system will subsequently monitor the conformance of those reports to the initial bid documentation. If modification/substitution of the planned utilization of DBE firms is necessary, consultation with the CDPH will be necessary.

II. Inclusion of EPA DBE forms in Bid Solicitation

The bid solicitation must include federal forms related to Subcontracting. These forms are intended to prevent bait and switch tactic by prime contractor bidders seeking subcontractors.

DBE Related Forms from EPA Associated with the Bid Solicitation Phase

EPA Form 6100-2 DBE Program Subcontractor Participation Form. The DBE subcontractor *may* use this form as necessary to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid, and any other concerns the DBE subcontractor might have. DBE subcontractors may send Form 6100-2 directly to the Region 9 DBE Coordinator listed below:

Joseph Ochab, DBE Coordinator
USEPA Region 9 (MTS-4)
75 Hawthorne Street,
San Francisco, CA 94105

Federal Law Executive Orders 11625,12138, and 12432 are applicable to federal funding. The United States Environmental Agency has adopted regulations to implement those requirements [40 Code of Federal Regulations Part 33 Participation by **Disadvantaged Business Enterprises [DBE]** in United States Environmental Protection Agency Programs- **[Federal DBE Regulations]**.

EPA Form 6100–3—DBE Program Subcontractor Performance Form. This form captures the intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime contractor. Prime contractor bidder must submit EPA Form 6100-3 [completed by the DBE subcontractor] to the Water System as part of the bid submission.

EPA Form 6100–4—DBE Program Subcontractor Utilization Form. This form captures the prime contractor's intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract. Prime contractor bidder must submit EPA Form 6100-4 to the Water System as part of their bid submission.

III. Funding Recipient Shall Maintain a Bidders List

As required by Federal DBE Regulations, Water System is required to create and maintain a bidders list of **all firms that bid or quote on prime contracts or bid or quote subcontracts** on the project. Supplier shall maintain bidders list until Supplier has certified project completion to CDPH (Note: Projects receiving less than $250,000 are exempt from this requirement).

IV. Subcontractor Payment Provision

Federal DBE regulations require that the water system prime contract include a requirement that the prime contractor must pay subcontractors for satisfactory performance within 30 days from the prime contractor's receipt of payment from the water system.

V. Semi-annual DBE Utilization Reporting

After the prime contract is made, semiannual summary forms documenting MBE and WBE subcontractor/supplier/vendors utilized during the report period will be submitted by the prime contractor to the water system and CDPH within fifteen (15) days after April 1 and October 1, throughout the project, until after submission of the final claim.

VI. Minority Business Enterprises and Women's Business Enterprises Certification

Minority Business Enterprises and Women's Business Enterprises must be certified in order to be counted toward a project's MBE/WBE accomplishments. Certification information is available from California Department of Transportation (the State Unified Certification Program (CUCP).

CDPH SDWSRF DBE Requirement (CDPH), receives Drinking Water State Revolving funding from the U.S. Environmental Protection Agency (USEPA), adds State matching funds, then provides California water systems low interest loans and grant financing of water system infrastructure projects Since US EPA annually grant award to CDPH Since the majority of the funds available through the DWSRF program are federal assistance monies, some funding recipients must meet additional federal "cross-cutting" laws. Among these is the Disadvantaged Business Enterprise (DBE) program.

VII. Fair Share Goals

The USEPA, Region 9, and CDPH, Safe Drinking Water State Revolving Fund, have adopted the following goals for participation of Minority Business Enterprises and Women's Business Enterprises in designated SDWSRF funded projects, including all American Recovery and Reinvestment Act projects funded by CDPH.

Procurement Category	MBE Participation Goals	WBE Participation Goals
Construction	14%	6%
Supplies	22%	14%
Equipment	13%	19%
Services	31%	32%

For Further Information

Questions concerning SDWSRF implementation of the U.S. Environmental Protection Agency Regulations for Disadvantaged Business Enterprises in Program not addressed by this guidance, or requests for more detailed information, should be directed to sdwsrf@cdph.ca.gov.

ATTACHMENT 10

(Model)

CONTRACT PROVISIONS RELATIVE TO THE UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE

Compliance with the requirements of this document and attachments satisfies the Disadvantaged Business Enterprise (DBE) requirements for this construction contract. **Failure to take the six (6) affirmative steps listed under Good Faith Effort Requirements, prior to bid opening and to submit the (Attachment A) Disadvantaged Business Enterprise Information Form, Attachment D [EPA Form 6100-3] and Attachment E [EPA Form 6100-4] with the bid package shall cause the bid to be rejected as a non-responsive bid.**

The (*system*) advises potential bidders that the project ***is/may be*** funded in whole or part with federal loan or grant funds through the California Safe Drinking Water State Revolving Fund, and, therefore federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 – Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).

The DBE rule requires that responsive bid shall conform with "Good Faith Efforts" to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance. Bidder agrees that it will cooperate with and assist the (*system*) in fulfilling the DBE Good Faith Effort Requirement achieving "fair share objectives" and will exercise "Good Faith Efforts" to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the bidder shall, in the selection of any and all contractors, subcontractors, and vendors for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the following affirmative "Good Faith Efforts" steps:

Good Faith Effort Requirements

1. Include disadvantaged business enterprises on solicitation lists.
2. Assure that disadvantaged business enterprises are solicited whenever they are potential sources, in a way that encourages and facilitates their participation in the competitive process.
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged business enterprises.
4. Establish delivery schedules, when the requirements of the work permit, which will encourage participation by disadvantaged business enterprises.
5. Use the services and assistance of the Small Business Administration and the U.S. Minority Business Development Agency, as appropriate; and
6. If any contractor awards subagreements, require the contractor to take the affirmative steps in paragraphs (1) through (5) of this section.

Each bid must include submission of Attachment A, identifying each proposed subcontractor/supplier/ vendor for the project. Using Attachment A, the bidder must provide the following information for each proposed subcontractor/supplier/vendor: [(1) Firm name; (2) Contact person; (3) Entity's mailing address: (4) telephone number; (5) e-mail address; (6) The procurement on which the proposed subcontractor/supplier/vendor bid or quoted, and when; and (7) proposed subcontractor/supplier/vendor status as a disadvantaged business enterprise or non- disadvantaged business enterprise.

Other Requirements:

1. The apparent successful low bidder must submit documentation showing that, prior to bid opening, the required "Good Faith Efforts" were made. The documentation must be received by the (*system*) within (#) working days following bid opening, except Attachment A [Disadvantaged Business Enterprise Information Form], which is to be submitted **with the bid. Failure to submit Attachment A [Disadvantaged Business Enterprise Information Form] with the bid will cause the bid to be rejected as non-responsive.**

2. If the apparent successful low bidder is rejected or considered as non-responsible and/or has any non-responsive low DBE sub-bidder, a complete explanation must be provided to the (*system*).

3. Using Attachment B (Verification of Qualification), apparent successful low bidder must provide evidence of **certification** by a federal, state, or local government entity for each Disadvantaged Business Enterprise firm to be utilized. Such certification documentation shall be submitted within (#) working days following bid opening.

4. If additional procurement becomes necessary after the award of the prime contract, the "Good Faith Efforts" shall be applied, and, if Disadvantaged Business Enterprise subcontracts are awarded, Attachment B (Verification of Qualification) shall be provided to the (*system*) by the prime contractor within 10 working days following the award of each new subcontract.

5. Any deviation from the information contained in Attachment A [Disadvantaged Business Enterprise Information Form] shall not result in a reduction of Disadvantaged Business Enterprise participation without prior approval of the (*system*).

6. Failure of the apparent low bidder to perform the six affirmative "Good Faith Efforts" steps prior to bid opening and/or to submit Attachment A [Disadvantaged Business Enterprise Information Form] with its bid will lead to its bid being declared non-responsive by the (*system*). The (*system*) may then award the contract to the next low responsive, responsible bidder meeting the requirements of these contract provisions.

7. Prime contractor must pay its subcontractor(s) for satisfactory performance no more than 30 days from the prime contractor's receipt of payment.

8. Prime contractor must provide each proposed subcontractor/supplier/vendor copies of Attachment C [EPA Form 6100-2] and Attachment D [EPA Form 6100-3].

9. Each bid must include submission of Attachment D [EPA Form 6100-3] and Attachment E [EPA Form 6100-4].

DISADVANTAGED BUSINESS ENTERPRISE INFORMATION FORM

WATER SYSTEM NAME:	WATER SYSTEM NUMBER-PROJECT NUMBER:
PROJECT DESCRIPTION:	PROJECT LOCATION:

PRIME CONTRACTOR INFORMATION

NAME/ADDRESS: Name of firm Contact person Address, City, Zip Phone Email ☐ DBE ☐ MBE ☐ WBE ☐ OTHER	TYPE OF CONTRACT ☐ ARCHITECT/ENGINEER(A/E) ☐ CONSTRUCTION ☐ SUPPLIER/SERVICE (S/S) AMOUNT OF CONTRACT/BID: $

SUBCONTRACTOR INFORMATION

☐ DBE ☐ MBE ☐ WBE ☐ OTHER ☐ SUBCONTRACTOR ☐ SUPPLIER/SERVICE ☐ JOINT VENTURE ☐ BROKER TYPE OF CONTRACT CONTRACT AMOUNT $	NAME /ADDRESS: Name of firm Contact person Address City, Zip Phone Email
☐ DBE ☐ MBE ☐ WBE ☐ OTHER ☐ SUBCONTRACTOR ☐ SUPPLIER/SERVICE ☐ JOINT VENTURE ☐ BROKER TYPE OF CONTRACT CONTRACT AMOUNT $	NAME /ADDRESS: Name of firm Contact person Address City, Zip Phone Email
☐ DBE ☐ MBE ☐ WBE ☐ OTHER ☐ SUBCONTRACTOR ☐ SUPPLIER/SERVICE ☐ JOINT VENTURE ☐ BROKER TYPE OF CONTRACT CONTRACT AMOUNT $	NAME /ADDRESS: Name of firm Contact person Address City, Zip Phone Email

GOALS FOR MBE & WBE PARTICIPATION

	% MBE	% WBE
Construction	14%	6%
Supplies	22%	14%
Services	31%	32%
Equipment	13%	19%

FORM COMPLETED BY:

NAME	TITLE	PHONE
SIGNATURE	DATE	EMAIL

FAILURE TO COMPLETE AND SUBMIT THIS FORM WITH BID -WILL CAUSE THE BID TO BE REJECTED AS NON-RESPONSIVE

☐ Additional pages attached

Fair Share Objectives

Interested bidders are advised that the following fair share objectives have been established for this project. Fulfillment of the Disadvantaged Business Enterprise requirement is based on documented completion of the Good Faith Effort Requirements, not level of Disadvantaged Business Enterprise participation proposed/achieved.

	Minority Business Enterprise	Women's Business Enterprise
CONSTRUCTION	14%	6%
SUPPLIES	22%	14%
SERVICES	31%	32%
EQUIPMENT	13%	19%

Semiannual DBE Utilization Reporting

In order to fulfill federal reporting requirements, the selected prime contractor must, using Attachment F [MBE/WBE Utilization], report to (*system*) on a semiannual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise subcontractor/supplier/vendors. The (*system*) will compile all MBE/WBE Utilization reports from prime contractor(s) and sub-contractor(s) into one report and submit to CDPH by April 15 and October 15 of each year until the last claim is submitted.

MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE)[1]
VERIFICATION OF QUALIFICATION

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
DIVISION OF DRINKING WATER AND ENVIRONMENTAL MANAGEMENT

Firm Name:	Phone:
Address:	
Principal Service or Product:	
☐- MBE ☐- WBE	
☐- Prime Contractor ☐- Supplier of Material/Service ☐- Subcontractor ☐- Broker	
☐- Sole Ownership ☐- Corporation ☐- Partnership ☐- Joint Venture	

Names of Owners	Percent Ownership	MBE Ethnic Identity	WBE

Agency Certifying MBE /WBE Qualification	
Certifying Agency Address	Certifying Agency Phone
Certification number	Date Certified
Submitted by:	Date:

[1] Refer to definitions on the next page.

MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) [USEPA DEFINITIONS-

A MBE is a business that is, (1) at least 51 percent owned and controlled by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners.

A WBE is a business that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; and, (2) whose daily business operations are managed and directed by one or more of the women owners.

MINORITY INDIVIDUALS INCLUDE:

(a) American Indians

Persons having origins in any of the original peoples of North America. To qualify in this group, a person must be a citizen of the United States and meet one or more qualifying criteria including:

(1) Be at least one-fourth Indian descent (as evidenced by registration with the Bureau of Indian Affairs);

(2) Characteristic Indian name;

(3) Recognition in the community as an Indian;

(4) Membership in a tribe, band or group of American Indians (recognized by the Federal Government), as evidenced by a tribal enrollment number or similar indication; and

(5) Characteristic Indian appearance and features.

(b) Black Americans

U.S. citizens, other than Hispanic, having origins in any of the black racial groups of Africa.

(c) Asian Americans

U.S. citizens having origins in any of the original peoples of the Far East, Southern Asia, the Indian subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa. The Indian subcontinent takes in the countries of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.

(d) Hispanic Americans

U.S. citizens of Mexican, Puerto Rican, Cuban, or other Spanish culture or origin, regardless of race. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in this category. Persons from Brazil, Guyana, Surinam or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category. In addition, the category does not include persons from Portugal, who should be classified according to race.

(e) American Eskimos and American Aleuts

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature

Title/Date

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	BID/PROPOSAL NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR

Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No

Signature of Prime Contractor _____ Date _____

Print Name and Title _____

Signature of Subcontractor _____ Date _____

Print Name and Title _____

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	EMAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors[1] will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER AND EMAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor _____ Date _____

Print Name _____ Title _____

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
SAFE DRINKING WATER STATE REVOLVING FUND PROGRAM
MBE/WBE UTILIZATION
FOR COMPLIANCE WITH
FEDERAL SDWSRF FUNDING REQUIREMENTS

PART 1. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR 2 0 _ _	1B. REPORTING PERIOD (Check ALL appropriate boxes) ☐ 1st (Oct-Dec) ☐ 2nd (Jan-Mar) ☐ 3rd (Apr-Jun) ☐ 4th (Jul-Sep) ☐ Annual ☐ Check if this is the last report for the project (Project completed).
1C. REVISION OF A PRIOR REPORT? Yes ☐ No ☐ Year: _____ Quarter: _____	BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:

2A. SUBMIT REPORT TO Safe Drinking Water State Revolving Fund Program MBE/WBE Coordinator (MS 7418) 1616 Capitol Ave. P.O. Box 997413 Sacramento, CA 95899-7413		3A. SDWSRF FUNDING RECIPIENT NAME AND ADDRESS 3B. SDWSRF FUNDING AGREEMENT NUMBER:	
2B. STATE CONTACT Mally Vue (mally.vue@cdph.ca.gov)	2C. PHONE/FAX: (916) 449-5600 (916) 449-5656	3C. RECIPIENT REPORTING CONTACT: Name: E-mail:	3D. PHONE: Fax:

4A. TOTAL SDWSRF FUNDING ASSISTANCE AMOUNT SDWSRF LOAN $_____ SDWSRF GRANT : $_____	4B. If NO procurement and NO accomplishments were made this reporting period, check and skip to Block No. 7. (Procurements are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. Accomplishments, in this context, are procurements made with MBE and/or WBE firms. ☐

4C. **Total Procurement and MBE/WBE Accomplishments This Reporting Period**
(Only include amount not reported in any prior reporting period)

Were procurements made under this SDWSRF funding assistance during this reporting period? Yes ☐ No ☐

Total procurement made with SDWSRF funding assistance during this reporting period: Amount $_____

Actual MBE/WBE Accomplishment with SDWSRF funding assistance during this reporting period:

	Construction	Equipment	Services	Supplies	Total
$MBE	$____	$____	$____	$____	$____
$WBE	$____	$____	$____	$____	$____

5. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.)

6. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	DATE

CDPH SDWSRF
MBE/WBE UTILIZATION REPORT
FOR COMPLIANCE WITH FEDERAL SDWSRF FUNDING REQUIREMENTS

A. Water System Name:	B. Project Title	C. SDWSRF Loan Number	D. Claims submitted From (date): to (date):

1. Procurement Made by		2. Business Entity		3. Description of Procurement	4. Date of Award	5. Type of Product or Service Code	6. MBE/WBE Contractor/Subcontractor/Vendor Firm, Contact/Address/Phone
Water System:	Contractor:	Minority	Women				
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:

Type of product or service code			
1 = Construction	2 = Supplies	3 = Services	4 = Equipment

Note: Refer to Terms and conditions of your Funding e Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

Attachment 11

SDWSRF DBE Bidders List Requirement
(Federal Cross Cutter for SRF/ARRA Funding)

Water Systems subject to federal cross cutters are required to create and maintain a bidders list if the recipient of the funding is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the funding recipients who conduct competitive bidding with as accurate a database as possible about the universe of potential MBE/WBE and non-MBE/ WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must be kept until the water system revolving funding has completed and certified the project to CDPH.

The following information must be obtained from all prime and subcontractors:

(1) Name of Firm
(2) Name of Contact person
(3) Firm mailing address,
(4) Telephone number
(5) Firm contact email address;
(6) Procurement on which the entity bid or quoted,
(7) Date of bid/quote; and
(8) If applicable, MBE/WBE status

[Note: Entities receiving a combined total of $250,000 or less in federal funding in any one fiscal year, are exempt from the Requirement to Maintain A Bidders List

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
SAFE DRINKING WATER STATE REVOLVING FUND PROGRAM
MBE/WBE UTILIZATION
FOR COMPLIANCE WITH
FEDERAL SDWSRF FUNDING REQUIREMENTS

PART 1. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR

2 0 _ _

1B. REPORTING PERIOD (Check ALL appropriate boxes)

☐ 1st (Oct-Dec) ☐ 2nd (Jan-Mar) ☐ 3rd (Apr-Jun) ☐ 4th (Jul-Sep) ☐ Annual

☐ Check if this is the last report for the project (Project completed).

1C. REVISION OF A PRIOR REPORT?

Yes ☐ No ☐

Year: _____

Quarter: _____

BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:

2A. SUBMIT REPORT TO

Safe Drinking Water State Revolving Fund Program
MBE/WBE Coordinator (MS 7418)
1616 Capitol Ave.
P.O. Box 997413
Sacramento, CA 95899-7413

3A. SDWSRF FUNDING RECIPIENT NAME AND ADDRESS

3B. SDWSRF FUNDING AGREEMENT NUMBER:

2B. STATE CONTACT
Nadine Feletto
nadine.feletto@cdph.ca.gov)

2C. PHONE/FAX:
(916) 449-5600
(916) 449-5656

3C. RECIPIENT REPORTING CONTACT:
Name:
E-mail:

3D.
PHONE:
Fax:

4A. TOTAL SDWSRF FUNDING ASSISTANCE AMOUNT

SDWSRF LOAN $_____

SDWSRF GRANT : $_____

4B. If NO procurement and NO accomplishments were made this reporting period, check and skip to Block No. 7. (Procurements are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. Accomplishments, in this context, are procurements made with MBE and/or WBE firms.

☐

4C. **Total Procurement and MBE/WBE Accomplishments This Reporting Period**

(Only include amount not reported in any prior reporting period)

Were procurements made under this SDWSRF funding assistance during this reporting period ? Yes ☐ No ☐

Total procurement made with SDWSRF funding assistance during this reporting period: Amount $_____

Actual MBE/WBE Accomplishment with SDWSRF funding assistance during this reporting period:

	Construction	Equipment	Services	Supplies	Total
$MBE	$____	$____	$____	$____	$____
$WBE	$____	$____	$____	$____	$____

5. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.)

6. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE

TITLE

7. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE

DATE

CDPH SDWSRF
MBE/WBE UTILIZATION REPORT
FOR COMPLIANCE WITH FEDERAL SDWSRF FUNDING REQUIREMENTS

A. Water System Name:	B. Proj Title	C. SDWSRF Loan Number	D. Claims submitted From (date): to (date):

1. Procurement Made by		2. Business Enterprise		3. $ Value of Procurement	4. Date of Award	5. Type of Product or Service (Enter Code)	6. MBE/WBE Contractor or/ Subcontractor/Vendor Firm/ Contact/Address//Phone
Water System	Contractor	Minority	Women				
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:
							FIRM CONTACT ADDR CITY/ZIP PH:

Type of product or service codes:			
1 = Construction	2 = Supplies	3 = Services	4 = Equipment

Note: Refer to Terms and conditions of your Funding e Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

ATTACHMENT 13

INDENTURE

between the

CITY OF FRESNO

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

Trustee

Dated as of January 1, 2010

CITY OF FRESNO WATER SYSTEM REVENUE BONDS

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THIS INDENTURE made and entered into as of January 1, 2010 (the "Indenture") by and between The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States (the "Trustee") and the CITY OF FRESNO, a municipal corporation and charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City");

WITNESSETH:

WHEREAS, the City is a municipal corporation and charter city, duly organized and existing under a freeholders' charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in sections 3, 5 and 7 of article XI of the Constitution of the State of California and section 1223 of the Charter of the City;

WHEREAS, the City Council of the City, acting under and pursuant to the powers reserved to the City under sections 3, 5 and 7 of article XI of the Constitution of the State of California and section 1223 of the Charter of the City, has enacted the City of Fresno Municipal Improvements Revenue Bond Law, being Article 7 of Division 2 of Chapter 8 of the Municipal Code of the City which incorporates, to the extent made applicable by the Law, as hereinafter defined, the Revenue Bond Law of 1941, being Chapter 6 of Division 2 of Title 5 of the California Government Code, as enacted and as thereafter amended;

WHEREAS, the City now owns and operates facilities for obtaining, conserving, treating and supplying of water pursuant to Section 1221 of the Charter of the City, all of which are included in and comprise the Water System, as hereinafter defined;

WHEREAS, in order to provide for the authentication and delivery of the Bonds (as hereinafter defined), to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the City has authorized the execution and delivery of this Indenture;

WHEREAS, all acts and proceedings required by law necessary to make the Bonds, when executed by the City, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligations of the City payable in accordance with their terms, and to constitute this Indenture a valid and binding agreement of the parties hereto for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, premium, if any, and the interest on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the holders thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the City does hereby covenant and

agree with the Trustee, for the benefit of the respective holders from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; EQUAL SECURITY

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any Supplemental Indenture and of any certificate, opinion, request or other document herein or therein mentioned have the meanings herein specified:

Accountant's Report

"Accountant's Report" means a report signed by an Independent Certified Public Accountant.

Additional Bonds

"Additional Bonds" means Bonds issued in accordance with the terms and conditions of this Indenture for the purposes set forth in Section 3.02(a).

Additional Parity Obligations

"Additional Parity Obligations" means Parity Obligations, including Additional Bonds, satisfying the conditions set forth in Section 3.04 or 3.05.

Authorized Denominations

"Authorized Denominations" means with respect to a Series of Bonds the meaning set forth in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

Authorized Representative

"Authorized Representative" means the Mayor, City Manager or Controller of the City, or any other officer of the City duly authorized by the City for such purpose.

Beneficial Owner

"Beneficial Owner" means a beneficial owner of Bonds under the book-entry system of The Depository Trust Company.

Bond Indenture

"Bond Indenture" means, with respect to a Series of Bonds, this Indenture as supplemented by the Supplemental Indenture authorizing such Series of Bonds.

Bonds, Serial Bonds, Term Bonds

"Bonds" means the bonds of the City authorized by and executed, issued and delivered in accordance with Article II. The term "Serial Bonds" means Bonds for which no sinking fund payments are provided. The term "Term Bonds" means Bonds which are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

Business Day

"Business Day" means any day other than a Saturday or Sunday on which the Trustee is open for corporate trust business at its principal corporate trust office in Los Angeles, California.

Certificate of the City

"Certificate of the City" means an instrument in writing signed by the Mayor, City Manager or Controller of the City, or by any other officer of the City duly authorized by the City for that purpose.

City

"City" means the City of Fresno, a municipal corporation and charter city, duly organized and existing under and by virtue of the Constitution and laws of the State.

Code

"Code" means the Internal Revenue Code of 1986, as amended.

Common Reserve Fund

"Common Reserve Fund" means the fund by that name established pursuant to Section 4.03(c).

Common Reserve Requirement

"Common Reserve Requirement" means, as of any date of computation by the City, an amount equal to one-half (½) of maximum annual debt service on a Fiscal Year basis on all Outstanding Bonds secured by the Common Reserve Fund; provided, however, that, if, upon issuance of a Series of Bonds secured by the Common Reserve Fund, such amount would require moneys to be credited to the Common Reserve Fund from the proceeds of such Series of Bonds in an amount in excess of the maximum amount permitted under the Code, the Common Reserve Requirement shall mean an amount equal to the sum of the Common Reserve Requirement immediately preceding issuance of such Bonds and the maximum amount permitted under the Code to be deposited therein from the proceeds of such Bonds, as certified in a Certificate of the City.

Connection Fees

"Connection Fees" means major facilities water charges, trunk water fees and charges for service areas to the extent levied in connection with capital improvements financed with the Bonds, and any other connection fees and charges for the Water System as may be established by the City and designated as a Connection Fee for purposes of this Indenture, but shall not include oversize water charges, lateral water charges and house branch water charges (unless such charges are designated by the City as a Connection Fee for purposes of this Indenture).

Continuing Disclosure Certificate

"Continuing Disclosure Certificate" means that certain Continuing Disclosure Certificate of the City dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

Costs of Issuance

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution and delivery of the Indenture and the related sale of the Bonds, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies, filing fees, initial fees and charges of Trustee, fees and charges of the City, legal fees and charges, fees and expenses of consultants and professionals, fees and expenses of any financial advisor, fees and charges for preparation, execution and safekeeping of the Bonds, and any other charge, cost or fee in connection with the original sale, execution and delivery of the Bonds.

Credit Facility

"Credit Facility" means any letter of credit, surety bond, insurance, stand-by bond purchase agreement or other form of credit enhancement or liquidity support issued by a financial institution or organization, including, but not limited to, municipal bond insurance and guaranties, and may include any alternate credit facility, which provides for payment, in accordance with the terms of such Credit Facility, of principal, premium and/or interest on or purchase price of any Parity Obligations. A Credit Facility may be comprised of two or more credit facilities issued by two or more financial institutions.

Credit Facility Agreement

"Credit Facility Agreement" means the agreement or agreements (which may be the Credit Facility itself) between the City and the provider of a Credit Facility, as originally executed or as it may from time to time be replaced, supplemented or amended in accordance with the provisions thereof, providing for the reimbursement to the provider of a Credit Facility for payments under such Credit Facility, and the interest thereon.

Credit Facility Obligations

"Credit Facility Obligations" means obligations of the City to pay amounts due under a Credit Facility Agreement, including without limitation amounts advanced by the provider of the Credit Facility as credit support or liquidity for Parity Obligations and the interest thereon.

Current Revenues

"Current Revenues" means, for any Fiscal Year or other period, all rates, fees and charges received for, and all other income and receipts derived by the City from, the operation of the Water System or arising from the Water System determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges received by City for the Water System Service and the other services of the Water System, all proceeds of insurance covering business interruption loss relating to the Water System, investment earnings on amounts held in the Revenue Fund and the Rate Stabilization Fund and all other money howsoever derived by the City from the operation of the Water System or arising from the Water System, but excluding Connection Fees and refundable deposits made to establish credit and advances or contributions in aid of construction. Current Revenues also includes Refundable Credits during the period any Prior Bonds remain outstanding.

CVP Contract

"CVP Contract" means the contract between the City and the United States Department of the Interior Bureau of Reclamation.

Debt Service

"Debt Service" means, for any period of calculation, the sum of:

(1) the interest accruing during such period on all outstanding Parity Obligations, assuming that all outstanding Serial Parity Obligations are retired as scheduled and that all outstanding Term Parity Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized),

(2) those portions of the principal amount of all outstanding Serial Parity Obligations maturing in such period, and

(3) those portions of the principal amount of all outstanding Term Parity Obligations required to be prepaid or paid in such period;

but less (i) the earnings to be derived from the investment of moneys on deposit in debt service reserve funds established for Parity Obligations and (ii) less the Refundable Credits received by the City after the date on which Prior Bonds are no longer outstanding;

provided that, as to any such Parity Obligations bearing interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of

(i) the actual rate on the date of calculation, or if such Parity Obligation is not yet outstanding, the initial rate (if established and binding),

(ii) if such Parity Obligation has been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, or if such Parity Obligation has not been outstanding for the twelve prior months, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the Parity Obligations to be issued, and

(iii) (A) if interest with respect to such Parity Obligation is excludable from gross income under the applicable provisions of the Internal Revenue Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published), or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities;

provided further that if any series or issue of such Parity Obligations have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year, Debt Service shall be determined for the period of determination as if the principal of and interest on such series or issue of such Parity Obligations were being paid from the date of issuance thereof in substantially equal annual amounts over a period of twenty-five (25) years from the date of calculation; and

provided further that, as to any Parity Obligations or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Obligations or portions thereof, such accreted value shall be treated as principal in the calculation of Debt Service and shall be deemed due on the scheduled redemption or payment date of such Parity Obligations; and

provided further that if a Qualified Swap Agreement has been entered into by the City with respect to any Parity Obligations proposed to be issued, the interest on such Parity Obligations during which payments are to be exchanged under the Qualified Swap Agreement shall be determined for purposes of calculating Debt Service by adding: (1) the amount of Debt Service to be paid by the City as interest on such Parity Obligations during such period (determined as provided above) and (2) the net amount (which may be a negative amount) to be paid by the City under the Qualified Swap Agreement (after giving effect to payments to be made and received by the City under the Qualified Swap Agreement) during such period, and for this purpose any variable rate of interest agreed to be paid under the Qualified Swap Agreement shall be deemed to be the rate at which the related Additional Parity Obligations bearing interest at a variable rate shall be assumed to bear interest; and

provided further that if the Parity Obligations constitute Paired Obligations, the interest rate on such Parity Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the City with respect to such Paired Obligations; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Debt Service shall be deducted from the amount of principal due at the final maturity of the Parity Obligations for which such debt service reserve fund was established and to the extent the amount in such debt service reserve fund is in excess of such amount of principal, such excess shall be applied to the full amount of principal due, in each preceding year, in descending order, until such amount is exhausted.

Engineer

"Engineer" means any engineer or firm of engineers qualified in engineering matters relating to water systems, who may, but need not, be an employee of the City.

Event of Default

"Event of Default" means an event described in Section 8.01.

Financial Newspaper

"Financial Newspaper" means The Wall Street Journal or The Bond Buyer, or any other newspaper or journal printed in the English language, publishing financial news and selected by the Trustee.

Fiscal Year

"Fiscal Year" means the twelve-month period terminating on June 30 of each year, or any other annual accounting period hereafter selected and designated by the City as its Fiscal Year in accordance with applicable law.

Generally Accepted Accounting Principles

"Generally Accepted Accounting Principles" means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor and the Governmental Accounting Standards Board or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Financial Accounting Standards Board or its successor.

Government Securities

The term "Government Securities" means (a) cash (fully insured by the Federal Deposit Insurance Corporation), (b) direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("U.S. Treasury Obligations"), (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (d) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (e) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed

directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

Holder

"Holder" means any person who shall be the registered owner of any Outstanding Bond.

Independent Certified Public Accountant

"Independent Certified Public Accountant" means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State or a comparable successor, appointed and paid by the City, and who, or each of whom --

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the City;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(3) is not connected with the City as a member, officer or employee of the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the City.

Indenture

"Indenture" means this Indenture, dated as of January 1, 2010, between the City and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Indentures executed pursuant to the provisions hereof.

Information Services

"Information Services" means Financial Information, Inc.'s "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 17302, Attention: Editor; Kenny Information Services' "Called Bond Service," 55 Broad Street, 28th Floor, New York, New York 10004; Moody's Investors Service's "Municipal and Government," 7 World Trade Center, 250 Greenwich Street, 23rd Floor, New York, New York 10007, Attention: Municipal News Reports; and Standard & Poor's Corporation's "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds, or such services as the City may designate in a Certificate of the City delivered to the Trustee.

Insurance Consultant

"Insurance Consultant" means

(a) the Risk Manager for the City or

(b) any insurance consultant or firm of insurance consultants generally recognized to be well qualified in insurance consulting matters relating to water and other municipal systems, appointed and paid by the City, and who or each of whom --

(1) is in fact independent and not under the domination of the City;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(3) is not connected with the City as a councilmember, officer, or employee of the City, but may be regularly retained to make reports to the City.

Interest Payment Date

"Interest Payment Date" means with respect to any Series of Bonds the meaning set forth in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

Issuing Instrument

"Issuing Instrument" means any indenture, trust agreement or other instrument or agreement under which Obligations are issued.

Law

"Law" means the City of Fresno Municipal Improvements Revenue Bond Law, being Article 7 of Division 2 of Chapter 8 of the Municipal Code of the City, as enacted and as it may from time to time be amended.

Maintenance and Operation Costs

"Maintenance and Operation Costs" means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the Water System, determined in accordance with Generally Accepted Accounting Principles, including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including all administrative costs of the City that are charged directly or apportioned to the operation of the Water System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms hereof, such as compensation, reimbursement and indemnification of the Trustee and fees and expenses of Independent Certified Public Accountants and Engineers; but excluding in all cases Debt Service, depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

Net Current Revenues

"Net Current Revenues" means for any Fiscal Year or other period, the Current Revenues during such Fiscal Year or period less (i) the Maintenance and Operation Costs during such Fiscal Year or period, and (ii) for such Fiscal Years or period the sum of all amounts required to be paid under the 1993 Indenture for principal, interest, reserve fund and any other debt service requirements on the Prior Bonds as the same become due and payable prior to the deposit of funds thereunder into the surplus fund held pursuant to the 1993 Indenture.

Net Proceeds

"Net Proceeds" means, when used with respect to any condemnation award or with respect to any insurance proceeds, the amount of such condemnation award or such insurance proceeds remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such award or such proceeds.

Net Revenues

"Net Revenues" means for any Fiscal Year or other period, the Revenues during such Fiscal Year or period less (i) the Maintenance and Operation Costs during such Fiscal Year or period, and (ii) for such Fiscal Years or period the sum of all amounts required to be paid under the 1993 Indenture for principal, interest, reserve fund and any other debt service requirements on the Prior Bonds as the same become due and payable prior to the deposit of funds thereunder into the surplus fund held pursuant to the 1993 Indenture.

1993 Indenture

"1993 Indenture" means the Indenture, dated as of August 15, 1993, between the City and The Bank of New York Mellon Trust Company, N.A., as successor trustee, as heretofore amended and supplemented, and as it may from time to time be amended or supplemented pursuant to the provisions thereof.

1998 Series A Bonds

"1998 Series A Bonds" means the City of Fresno Water System Revenue Refunding Bonds, 1998 Series A, in the original principal amount of $31,935,000, issued by the City pursuant to the 1993 Indenture.

Obligations

"Obligations" means (a) obligations with respect to borrowed money and includes bonds, notes, loans, contracts or other evidences of indebtedness, installment purchase payments under any contract, and lease payments under any financing or capital lease (determined to be such in accordance with Generally Accepted Accounting Principles), which are payable from the Revenue Fund, (b) obligations to replenish any debt service reserve fund with respect to obligations of the City described in (a) above; (c) obligations secured by or payable from any of obligations of the City described in (a) above; (d) obligations payable from the Revenue Fund and entered into in connection with, relating to, or otherwise serving as a hedge with respect to,

an obligation described in (a), (b) or (c) above under (1) any contract providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, (2) any contract to exchange cash flows or a series of payments, or (3) any contract to hedge payment, currency, rate spread or similar exposure, including but not limited to interest rate swap agreements and interest rate cap agreements; and (c) Credit Facility Obligations.

Opinion of Counsel

"Opinion of Counsel" means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the City.

Outstanding

"Outstanding," when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 7.02) all Bonds except

(1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(2) Bonds paid or deemed to have been paid within the meaning of Section 9.01; and

(3) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered by the City pursuant hereto.

Paired Obligations

"Paired Obligations" shall mean any series (or portion thereof) of Parity Obligations designated as Paired Obligations in the Issuing Instrument authorizing the issuance thereof, which are simultaneously issued (a) the principal of which is of equal amount maturing and to be redeemed (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (b) the interest rates which, taken together, result in an irrevocably fixed interest rate obligation of the City for the terms of such Paired Obligations.

Parity Obligations

"Parity Obligations" means (a) Bonds, and (b) Obligations which have a lien on Revenues on a parity with the lien of the Bonds and which satisfy the applicable conditions of Article III.

Permitted Investments

The term "Permitted Investments" means any of the following obligations if and to the extent that, at the time of making such investment, they are permitted by applicable law:

1. Government Securities.

2. Federal Housing Administration debentures.

3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

a) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes

c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations

d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)

4. Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 365 days) of any bank, including the Trustee and its affiliates, the short-term obligations of which are rated "A-l+" or better by S&P.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least $15 million.

6. Commercial paper (having original maturities of not more than 270 days) rated at the time of purchase "A-1+" by S&P.

7. Money market funds rated "Aam" or "AAm-G" by S&P, or better, which shall include funds for which the Trustee, its parent holding company, if any, or any affiliates as subsidiaries of the Trustee provide investment advisory or management services.

8. "State Obligations", which means:

a) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated at least "A-" by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

b) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (a) above and rated "A-1+" by S&P.

c) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state or state agency described in (b) above and rated "AA-" or better by S&P.

9. Pre-refunded municipal obligations rated "AAA" by S&P meeting the following requirements:

a) the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

b) the municipal obligations are secured by cash or U.S. Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

c) the principal of and interest on the U.S. Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification Report");

d) the cash or U.S. Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

e) no substitution of a U.S. Treasury Obligation shall be permitted except with another U.S. Treasury Obligation and upon delivery of a new Verification Report; and

f) the cash or U.S. Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements: with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A-" by S&P; or (2) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A-" by S&P, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated at least "A-" by S&P (each an "Eligible Provider"), provided that:

a) (i) permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal

when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral");

b) the trustee or a third party acting solely as agent therefore or for the issuer (the "Custodian") has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor's books) and such collateral shall be marked to market;

c) the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the City setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

d) the repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof;

e) the repurchase agreement shall provide that if during its term the provider's rating by S&P is withdrawn or suspended or falls below "A-" by S&P, the provider must, notify the City and the Trustee within five (5) days of receipt of such notice. Within ten (10) days of receipt of such notice, the provider shall either: (i) provide a written guarantee, (ii) post Eligible Collateral, or (iii) assign the agreement to an Eligible Provider. If the provider does not perform a remedy within ten (10) business days, the provider shall, at the direction of the trustee repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the City or the Trustee.

11. Investment agreements: with a domestic or foreign bank or corporation the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA-" by S&P (each an "Eligible Provider"); provided that:

a) interest payments are to be made to the trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds:

b) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven (7) days' prior notice; the City and the Trustee agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

c) the provider shall send monthly reports to the Trustee and the City setting forth the balance the City or Trustee has invested with the provider and the amounts and dates of interest accrued and paid by the provider;

d) the investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

e) the City and the Trustee shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;

f) the City and the Trustee shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (b) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (c) any judgment rendered by a court in the United States would be recognized and enforceable in such country;

g) the investment agreement shall provide that if during its term:

   i) the provider's rating by S&P falls below "AA-", the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (i) provide a written guarantee, (ii) post Eligible Collateral with the City, the Trustee or a third party acting solely as agent therefore (the "Custodian") free and clear of any third party liens or claims, or (iii) assign the agreement to an Eligible Provider, or (iv) repay the principal of and accrued but unpaid interest on the investment;

   ii) the provider's rating by S&P is withdrawn or suspended or falls below "A-", the provider must, at the direction of the City or the Trustee, within ten (10) days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the City or Trustee.

h) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the

total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the City setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

i) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof;

j) the investment agreement must provide that if during its term: (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the City or the Trustee, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or Trustee, as appropriate, and (ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or Trustee, as appropriate;

12. Variable rate demand bonds issued by California local agencies;

13. The Local Agency Investment Fund; and

14. Such other investments as are specified in a Written Request of the City.

Principal Payment Date

"Principal Payment Date" means with respect to any Series of Bonds the meaning set forth in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

Prior Bonds

"Prior Bonds" means (i) all bonds and other obligations of the City issued and outstanding pursuant to the 1993 Indenture and (ii) State Loans.

Project

"Project" means any additions, alterations, or improvements, including the design and engineering thereof, to the Water System financed with the proceeds of Bonds.

Project Costs

"Project Costs" means all costs of payment of, or reimbursement for, the engineering, design, construction, acquisition, installation, provision, administration and financing of a Project, including but not limited to, engineering and installation management costs, administrative costs and capital expenditures relating to financing payments, costs of accounting, feasibility, environmental and other reports and interest during the period of construction and installation of the Project.

Qualified Swap Agreement

"Qualified Swap Agreement" means a contract or agreement, having a lien on Revenues on a parity with the lien of Parity Obligations and satisfying the conditions of Section 3.06, intended to place Parity Obligations or the applicable investments on the interest rate, currency, cash flow or other basis desired by the City, including, without limitation, any interest rate swap agreement, currency swap agreement, forward payment conversion agreement or futures contract, any contract providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, any contract to exchange cash flows or a series of payments, or any contract, including, without limitation, an interest rate floor or cap, or an option, put or call, to hedge payment, currency, rate, spread or similar exposure, between the City and a counterparty.

Rate Stabilization Fund

"Rate Stabilization Fund" means the fund by that name established pursuant to Section 4.04.

Rating Agencies

"Rating Agencies" means Standard & Poor's Ratings Services, Moody's Investors Service and Fitch Inc., but, in each instance, only so long as such rating agency maintains a rating on the Bonds.

Rebate Certificate

"Rebate Certificate" means the Rebate Certificate attached to the Tax Certificate delivered by the City at the time of the issuance and delivery of the Bonds, as the same may be amended or supplemented in accordance with its terms.

Record Date

"Record Date" means the fifteenth day of the month immediately preceding an Interest Payment Date, whether or not such day is a Business Day.

Refundable Credits

"Refundable Credits" means the amounts which are payable by the Federal government under Section 6431 of the Tax Code, which the City elected to receive under Section 54AA(g)(1) of the Tax Code, and which relate to Parity Obligations.

Refunding Parity Obligations

"Refunding Parity Obligations" means Parity Obligations issued for the purposes and satisfying the conditions set forth in Section 3.05.

Representation Letter

"Representation Letter" means the letter of representation, dated the date of issuance of the Bonds, to The Depository Trust Company, New York, New York, from the City relating to the Bonds.

Reserve Funds

"Reserve Funds" means, collectively, the Common Reserve Fund and Separate Reserve Fund.

Reserve Requirement

"Reserve Requirement" means, collectively, the Common Reserve Requirement and Separate Reserve Requirement.

Revenues

"Revenues" means Current Revenues plus deposits to the Revenue Fund from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in Section 4.04, less amounts transferred to the Rate Stabilization Fund.

Revenue Fund

"Revenue Fund" means the fund by that name established in accordance with Section 4.02.

Securities Depositories

"Securities Depositories" means: The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attn: Call Notification Department, Fax (212) 855-7232; or such other addresses and/or such other securities depositories as the City may designate in a Certificate of the City delivered to the Trustee.

Separate Reserve Fund

"Separate Reserve Fund" means a reserve fund, if any, created pursuant to an Issuing Instrument for a Series of Bonds, that is not part of the Common Reserve Fund.

Separate Reserve Requirement

"Separate Reserve Requirement" means the requirement set forth in the Issuing Instrument establishing the Separate Reserve Fund.

Serial Obligations

"Serial Obligations" means Obligations for which no Sinking Fund Installments are established.

Serial Parity Obligations

"Serial Parity Obligations" means Serial Obligations which are Parity Obligations.

Series

"Series" means Obligations issued at the same time or sharing some other common term or characteristic and designated in the Issuing Instrument pursuant to which such Obligations were issued as a separate issue or series of Obligations.

Sinking Fund Installment

"Sinking Fund Installment" means, with respect to any Term Parity Obligations, each amount so designated for such Term Parity Obligations in the Issuing Instrument authorizing the issuance of such Parity Obligations requiring payments by the City from the Revenue Fund to be applied to the retirement of such Parity Obligations on and prior to the stated maturity date thereof.

State

"State" means the State of California.

State Loans

"State Loans" means the (i) Contract between the State of California Department of Water Resources and the City of Fresno for a Ground Water Recharge Construction Loan under the Water Construction Bond Law of 1988 (Contract No. E74002, executed on February 22, 1993), and the (ii) Loan Contract (Loan No. 0-817-550-0), dated as of March 1, 1992, between the State Water Resources Control Board and the City of Fresno.

Subseries

"Subseries" means, with respect to any Series of Bonds, a portion of the Bonds of such Series identified as a Subseries in the Supplemental Indenture authorizing such Series, which Bonds may bear interest at a different rate or based on a different interest rate determination method or otherwise have terms and conditions which vary from other Bonds of

such Series, all to the extent provided in or authorized by the Supplemental Indenture authorizing such Series of Bonds.

Supplemental Indenture

"Supplemental Indenture" means any indenture then in full force and effect which has been duly executed and delivered by the City and the Trustee amendatory hereof or supplemental hereto; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

Surplus Fund

"Surplus Fund" means the fund held by the City pursuant to Section 4.03(d) hereof.

Term Obligations

"Term Obligations" means Obligations which are payable on or before their specified maturity dates from Sinking Fund Installments established for that purpose and calculated to retire such Obligations on or before their specified maturity dates.

Term Parity Obligations

"Term Parity Obligations" means Term Obligations which are Parity Obligations.

Test Period Net Revenues

"Test Period Net Revenues" means, with respect to the issuance of any Additional Parity Obligations, the maximum amount of Net Revenues for either the prior Fiscal Year or any consecutive twelve month period during the eighteen months immediately preceding the issuance of such Additional Parity Obligations.

Test Period Net Current Revenues

"Test Period Net Current Revenues" means, with respect to the issuance of any Additional Parity Obligations, the maximum amount of Net Current Revenues for either the prior Fiscal Year or any consecutive twelve month period during the eighteen months immediately preceding the issuance of such Additional Parity Obligations.

Trustee

"Trustee" means The Bank of New York Mellon Trust Company, N.A., or any other bank or trust company which may at any time be substituted in its place as provided in Section 6.01.

2003 Series A Bonds

"2003 Series A Bonds" means the City of Fresno Water System Revenue Refunding Bonds, 2003 Series A, in the original principal amount of $16,155,000, issued by the City pursuant to the 1993 Indenture.

Water System

"Water System" means all facilities for obtaining, conserving, treating and supplying of water now owned by the City and all other properties, structures or works hereafter acquired and constructed by the City and determined to be a part of the Water System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

Water System Service

"Water System Service" means the water conveyance, treatment and supply service furnished, made available or provided by the Water System.

Written Request of the City

"Written Request of the City" means an instrument in writing signed by the Mayor, City Manager or Controller of the City, or any other authorized officer for the City designated in writing to the Trustee.

SECTION 1.02. Equal Security. In consideration of the acceptance of the Bonds by the Holders thereof, the Indenture shall be deemed to be and shall constitute a contract between the City and the Holders from time to time of all Bonds authorized, executed, issued and delivered hereunder and then Outstanding to secure the full and final payment of the interest on and principal of and redemption premiums, if any, on all Bonds which may from time to time be authorized, executed, issued and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the City shall be for the equal and proportionate benefit, protection and security of all Holders of the Bonds without distinction, preference or priority as to security or otherwise of any Bonds over any other Bonds by reason of the number or date thereof or the time of authorization, sale, execution, issuance or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

ARTICLE II

ISSUANCE OF BONDS

SECTION 2.01. Authorization and Purpose of Bonds. The City has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and that the City is now duly authorized, pursuant to the Law, to issue the Bonds in the form and manner provided herein for the purpose of providing funds to pay for and construct the Project and that the Bonds shall be entitled to the benefit, protection and security of the provisions hereof.

SECTION 2.02. Terms of the Bonds. The Bonds of each Series shall be dated such date, shall be issued in such denominations, shall bear interest at such rate or rates determined in such manner and payable at such intervals and shall mature and become payable on such date or dates and in such year or years, and may be subject to redemption, tender and purchase on such terms, as may be determined by the City at the time of issuance thereof, all as shall be set forth in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

Unless otherwise provided in the Supplemental Indenture delivered in connection with such Series of Bonds, the Bonds of each Series shall be initially registered in the name of "Cede & Co.," as nominee of DTC and shall be evidenced by one or more bond certificates for each Series of Bonds in the total aggregate principal amount of the Bonds of such Series. Registered ownership of any Series of Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.10 hereof, or in the event the use of DTC is discontinued, in accordance with the provisions set forth in Section 2.04 hereof.

The principal or redemption price of a Series of Bonds shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee or at such other location as shall be specified in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds. Payment of the interest on any Bond shall be made to the person whose name appears on the bond registration books of the Trustee as the Holder thereof as of the Record Date preceding each Interest Payment Date, such interest to be paid by check mailed by first class mail on the applicable Interest Payment Date to the Holder at his address as it appears on such registration books; provided that such interest shall be paid by wire transfer to an account in the United States for any Holder of at least $1,000,000 in aggregate principal amount of Bonds of any Series if the Holder makes a written request to the Trustee on or prior to the close of business on the Record Date preceding such Interest Payment Date specifying the account address.

Any such interest not so punctually paid or duly provided for with respect to any Bond shall forthwith cease to be payable to the Bondholder on such Record Date and shall be paid to the Person in whose name the Bond is registered at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice whereof

to be given to the Holders of such Bonds as set forth in the Supplemental Indenture establishing the terms and provisions of such Bonds or, if not provided therein, notice whereof to be given to the Holders of such Bonds not less than ten (10) days prior to such special record date.

SECTION 2.03. Execution of Bonds. The Mayor of the City is hereby authorized and directed to execute each of the Bonds on behalf of the City and the City Clerk of the City is hereby authorized and directed to countersign each of the Bonds on behalf of the City. The signatures of such Mayor and City Clerk may be by printed, lithographed or engraved by facsimile reproduction. In case any officer whose signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds to the purchaser thereof, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until such delivery of the Bonds.

Only those Bonds bearing thereon a certificate of authentication and registration in the form hereinbefore recited, executed manually and dated by the Trustee, shall be entitled to any benefit, protection or security hereunder or be valid or obligatory for any purpose, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated and registered have been duly authorized, executed, issued and delivered hereunder and are entitled to the benefit, protection and security hereof.

SECTION 2.04. Transfer and Payment of Bonds. Any Bonds may, in accordance with its terms, be transferred in the books required to be kept pursuant to the provisions of Section 2.06 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bonds for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Trustee. Whenever any Bonds or Bonds shall be surrendered for transfer, the City shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of the same Series and maturity for a like aggregate principal amount. The Trustee shall require the payment by the Holder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer as a condition precedent to the exercise of such privilege. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the City.

The City and the Trustee may deem and treat the registered owner of any Bonds as the absolute owner of such Bonds for the purpose of receiving payment thereof and for all other purposes, whether such Bonds shall be overdue or not, and neither the City nor the Trustee shall be affected by or liable due to any notice or knowledge to the contrary; and payment of the interest on and principal of and redemption premium, if any, on such Bonds shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge all liability on such Bonds to the extent of the sum or sums so paid.

The Trustee shall not be required to issue, register the transfer of or exchange any Bonds after a Record Date and on or prior to an Interest Payment Date or during the period established by the Trustee for the selection of Bonds for redemption, or to register the transfer of or exchange any Bonds which have been selected for redemption in whole or in part, from and after the day of mailing of a notice of redemption of such Bonds.

SECTION 2.05. Exchange of Bonds. Bonds may be presented for exchange at the office of the Trustee for a like aggregate principal amount of Bonds of the same Series and maturity of other authorized denominations. The Trustee shall require the payment by the Holder requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange as a condition precedent to the exercise of such privilege. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the City. The Trustee shall not be required to make any such exchange after a Record Date and on or prior to an Interest Payment Date or during the period established by the Trustee for the selection of Bonds for redemption, or to register the exchange of any Bonds which have been selected for redemption in whole or in part, from and after the day of mailing of a notice of redemption of such Bonds.

SECTION 2.06. Bond Registration Books. The Trustee will keep sufficient books for the registration and transfer of the Bonds which shall at all times be open to inspection by the City, and upon presentation for such purpose the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer the Bonds in such books as hereinabove provided.

SECTION 2.07. Mutilated, Destroyed, Stolen or Lost Bonds. If any Bond shall become mutilated the Trustee at the expense of the Holder shall thereupon authenticate and deliver, a new Bond of like tenor and number in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled.

If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to the Trustee and indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Holder, shall thereupon authenticate and deliver, a new Bond of like tenor and number in lieu of and in substitution for the Bond so lost, destroyed or stolen.

The Trustee may require payment of a reasonable sum for each new Bond issued under this Section and of the expenses which may be incurred by the City and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds of the same Series secured by this Indenture. Neither the City nor the Trustee shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for any purpose hereunder, including but not limited to the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same for all purposes hereunder.

SECTION 2.08. Temporary Bonds. The Bonds issued under this Indenture may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, shall be in fully registered form and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed and authenticated as authorized by the City, in accordance

with the terms of the Act. If the City issues temporary Bonds it will execute and furnish definitive Bonds as soon as practicable and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the office of the Trustee in Los Angeles, California, and the Trustee shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds delivered hereunder.

SECTION 2.09. Validity of Bonds. The validity of the issuance of the Bonds shall not be dependent on or affected in any way by the proceedings taken by the City for the financing of the Project or by any contracts made by the City or its agents in connection therewith, and shall not be dependent upon the completion of the Project or upon the performance by any person, firm or corporation of his or its obligation with respect thereto. The recital contained in the Bonds that the same are issued pursuant to the Law and pursuant hereto shall be conclusive evidence of their validity and of the regularity of their issuance, and all Bonds shall be incontestable from and after their issuance. The Bonds shall be deemed to be issued, within the meaning hereof, whenever the definitive Bonds (or any temporary Bonds exchangeable therefor) shall have been delivered to the purchaser thereof and the proceeds of sale thereof received.

SECTION 2.10. Special Covenants as to Book-Entry Only System for Bonds. (a) Except as otherwise provided in subsections (b) and (c) of this Section, all of the Bonds initially issued shall be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), or such other nominee as DTC shall request pursuant to the Representation Letter. Payment of the interest on any Bond registered in the name of Cede & Co. shall be made on each interest payment date for such Bonds to the account, in the manner and at the address indicated in or pursuant to the Representation Letter.

(b) The Bonds initially shall be issued in the form of a single authenticated fully registered bond for each stated maturity of such Bonds, representing the aggregate principal amount of the Bonds of such maturity. Upon initial issuance, the ownership of all such Bonds shall be registered in the registration records maintained by the Trustee pursuant to Section 2.06 hereof in the name of Cede & Co., as nominee of DTC, or such other nominee as DTC shall request pursuant to the Representation Letter. The Trustee, the City and any paying agent may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of and interest on such Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Holders hereunder, registering the transfer of Bonds, obtaining any consent or other action to be taken by Holders of the Bonds and for all other purposes whatsoever; and neither the Trustee nor the City or any paying agent shall be affected by any notice to the contrary. Neither the Trustee nor the City or any paying agent shall have any responsibility or obligation to any Participant (which shall mean, for purposes of this Section, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person, with respect to (i) the accuracy of any records maintained by DTC or any Participant, (ii) the payment by DTC or any

Participant of any amount in respect of the principal or redemption price of or interest on the Bonds, (iii) any notice which is permitted or required to be given to Holders of Bonds hereunder, (iv) the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or (v) any consent given or other action taken by DTC as Holder of Bonds. The Trustee shall pay all principal of and premium, if any, and interest on the Bonds only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter, and all such payments shall be valid and effective to satisfy fully and discharge the City's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of its then existing nominee, the Bonds will be transferable to such new nominee in accordance with subsection (f) of this Section.

(c) In the event that the City determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain bond certificates, the Trustee shall, upon Written Request of the City, so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of bond certificates. In such event, the Bonds will be transferable in accordance with subsection (f) of this Section. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice of such discontinuance to the City and the Trustee and discharging its responsibilities with respect thereto under applicable law. In such event, the Bonds will be transferable in accordance with subsection (f) of this Section. Whenever DTC requests the City and the Trustee to do so, the Trustee and the City will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all certificates evidencing the Bonds then Outstanding. In such event, the Bonds will be transferable to such securities depository in accordance with Section (f) of this Section, and upon and after the effective date of such transfer, all references in this Indenture to DTC or its nominee shall be deemed to refer to such successor securities depository and its nominee, as appropriate.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as all Bonds Outstanding are registered in the name of any nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on each such Bond and all notices with respect to each such Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

(e) In the event that any transfer or exchange of Bonds is authorized under subsection (b) or (c) of this Section, such transfer or exchange shall be accomplished upon receipt by the Trustee from the registered owner thereof of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Sections 2.04 and 2.05 hereof. In the event Bond certificates are issued to Holders other than Cede & Co., its successor as nominee for DTC as holder of all the Bonds, another securities depository as holder of all the Bonds, or the nominee of such successor securities depository, the provisions of Sections 2.04 and 2.05 hereof shall also apply to, among other things, the registration, exchange and transfer of the Bonds and the method of payment of principal of, premium, if any, and interest on the Bonds.

ARTICLE III

ISSUANCE OF BONDS AND PARITY OBLIGATIONS

SECTION 3.01. General Provisions for Issuance of Bonds.

(a) All (but not less than all) of the Bonds of each Series shall be executed by the City for issuance under the applicable Bond Indenture and delivered to the Trustee and thereupon shall be authenticated by the Trustee and by it delivered to the City or upon its order, but only upon the receipt by the Trustee of the following items (upon which the Trustee may conclusively rely in determining whether the conditions precedent for the issuance and authentication of such Series of Bonds have been satisfied):

(1) A copy of this Indenture, as amended to the date of the initial delivery of such Series of Bonds, and a copy of the Supplemental Indenture authorizing the issuance of such Series of Bonds, which Supplemental Indenture shall specify, or provide for the specification in a Written Request of the City of: (i) the sources of payment, if any, for the Bonds of such Series other than the Net Revenues, (ii) the Series designation of such Bonds; (iii) whether the Bonds of such Series are to be divided into Subseries and the manner of designating such Subseries; (iv) the authorized principal amount of the Bonds of such Series and each Subseries thereof; (v) the purposes for which such Series of Bonds are being issued, which shall be one of the purposes specified in Section 3.02 or 3.03; (vi) the date or manner of determining the date of the Bonds of such Series and each Subseries thereof; (vii) the maturity date or dates of the Bonds of such Series and each Subseries thereof and the principal amount of the Bonds of such Series or Subseries maturing on each such maturity date; (viii) which, if any, of the Bonds of such Series will constitute Serial Obligations and which, if any, will constitute Term Obligations; (ix) the interest rate or rates on the Bonds of such Series and each Subseries thereof or the manner of determining such interest rate or rates; (x) the Interest Payment Dates for the Bonds of such Series and each Subseries thereof or the manner of establishing such Interest Payment Dates; (xi) the Authorized Denominations of, and the manner of numbering and lettering, the Bonds of such Series and each Subseries thereof; (xii) the redemption price or prices, if any, and, subject to Article IV, the redemption terms for the Bonds of such Series and each Subseries thereof; (xiii) the Sinking Fund Installments, if any, for the Bonds of such Series and each Subseries thereof which constitute Term Obligations, provided that each Sinking Fund Installment, if any, shall fall upon an Interest Payment Date for the Bonds of such Series or Subseries; (xiv) if any of the Bonds of such Series or any Subseries thereof constitute tender indebtedness, the terms and conditions, including purchase price, for the exercise by the Owners or Beneficial Owners of such Bonds of the purchase and extension options granted with respect to such Bonds and the terms and conditions, including Purchase Price, upon which the Bonds of such Series or Subseries will be subject to mandatory tender for purchase; (xv) if the Bonds of such Series are not to be Book-Entry Bonds, a statement to such effect; (xvi) the application of the proceeds of the sale of such Series of Bonds including the amount, if any, to be deposited in the funds and accounts under the applicable Bond Indenture; (xvii) the forms of the Bonds of such Series and each Subseries thereof and of the certificate of authentication thereon; and (xviii) the appropriate funds and accounts, if any, relating to such Series of Bonds established under such Supplemental Indenture;

(2) An Opinion of Bond Counsel, dated the date of the initial delivery of such Series of Bonds, to the effect that this Indenture, and the Supplemental Indenture authorizing the issuance of such Series of Bonds, are valid obligations of the City;

(3) With respect to any Additional Bonds, the Trustee shall have received the certificate referred to in Section 3.04;

(4) The Supplemental Indenture shall specify whether such Series of Bonds is secured by the Common Reserve Fund, a Separate Reserve Fund or no reserve fund and, (a) if such Series of Bonds is secured by the Common Reserve Fund, an amount, if necessary, sufficient to increase the Common Reserve Fund to an amount at least equal to the Common Reserve Requirement with respect to all Bonds Outstanding upon the issuance of such Series of Bonds; and (b) if such Series of Bonds is secured by a Separate Reserve Fund, the Separate Reserve Requirement for such Series of Bonds and the requirements of a Credit Facility, if any, for the Separate Reserve Fund; and

(5) Such further documents, moneys and securities as are required by the applicable provisions of Section 3.02, 3.03 or Section 3.04 or of the Supplemental Indenture authorizing the issuance of such Series of Bonds.

(b) After the original issuance of Bonds of any Series, no Bonds of such Series shall be issued except in lieu of or in substitution for other Bonds of such Series pursuant to the applicable Bond Indenture.

SECTION 3.02. Additional Bonds.

(a) One or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of paying all or a portion of Project Costs. Additional Bonds may be issued in a principal amount sufficient to pay such Project Costs, Costs of Issuance and deposits into the funds or accounts required by the provisions of the applicable Bond Indenture.

(b) The proceeds, including accrued interest, of the Additional Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Indenture authorizing such Series of Bonds.

SECTION 3.03. Refunding Bonds.

(a) One or more Series of Refunding Bonds may be issued, authenticated and delivered upon original issuance for the purpose of refunding all or any portion of the Outstanding Prior Bonds or Parity Obligations. Refunding Bonds may be issued in a principal amount sufficient to accomplish such refunding including providing amounts for the Costs of Issuance of such Refunding Bonds, and the making of any deposits into the funds and accounts required by the provisions of the applicable Bond Indenture.

(b) The proceeds, including accrued interest, of the Refunding Bonds of each Series shall be applied simultaneously with the delivery of such Bonds as provided in the Supplemental Indenture authorizing such Series of Refunding Bonds.

SECTION 3.04. Additional Parity Obligations. The City may at any time issue any Additional Parity Obligations, in accordance herewith; provided that the requirements of either clause (a) or (b) are satisfied.:

(a) (1) Test Period Net Revenues are at least equal to 125% of the Debt Service for each of the five Fiscal Years commencing with the first full Fiscal Year following the period of capitalized interest (if any) for the Additional Parity Obligations, as evidenced by a Certificate of the City; and

(2) Test Period Net Current Revenues are at least equal to 100% of the Debt Service for each of the five Fiscal Years commencing with the first full Fiscal Year following the period of capitalized interest (if any) for the Additional Parity Obligations, as evidenced by a Certificate of the City; or

(b) (1) Projected Net Revenues are at least equal to 125% of Debt Service for each of the five Fiscal Years commencing with the first full Fiscal Year following the period of capitalized interest, if any, for the Additional Parity Obligations, as evidenced by a Certificate of the City; and

(2) Projected Net Current Revenues are at least equal to 100% of Debt Service for each of the five Fiscal Years commencing with the first full Fiscal Year following the period of capitalized interest, if any, for the Additional Parity Obligations, as evidenced by a Certificate of the City.

(c) The projections set forth in Section 3.04(b) may take into account (i) only rate increases for the Water System Service adopted by the City Council of the City prior to the date of issuance of such Additional Parity Obligations and which are scheduled to be effective within 36 months following the date of issuance of such Additional Parity Obligations, (ii) an allowance for Net Revenues or Net Current Revenues from any additions or connections to or improvements or extensions of the System, all in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues or Net Current Revenues to be derived from such additions, connections, improvements or extensions; and (iii) expected reductions in Maintenance and Operation Costs due to the prepayment of the CVP Contract.

SECTION 3.05. Refunding Parity Obligations. Notwithstanding Section 3.04, Additional Parity Obligations may be issued to refund outstanding Prior Bonds or Parity Obligations if, after giving effect to the application of the proceeds thereof, total Debt Service will not be increased in any Fiscal Year in which Prior Bonds or Parity Obligations respectively (outstanding on the date of issuance or incurrence of such refunding Parity Obligations, but excluding such refunding Parity Obligations) not being refunded are outstanding.

SECTION 3.06. Qualifying Swap Agreements. Without regard to Section 3.04, the City may at any time issue or enter into an obligation or commitment which is a Qualified Swap Agreement, provided (i) the Qualified Swap Agreement shall relate to a principal amount of Outstanding Parity Obligations, Parity Obligations expected to be issued within the next twelve months or investments held hereunder or under an Issuing Instrument for Parity

Obligations, in each case specified in a Certificate of the City; and (ii) the notional amount of the Qualified Swap Agreement shall not exceed the principal amount of the related Parity Obligation or the amount of such investments, as applicable. The Qualified Swap Agreement shall have a lien on Revenues on a parity with the lien of Parity Obligations provided that any termination payment shall be subordinate to the lien of Parity Obligations. All counterparties or guarantors to the Qualified Swap Agreement must have a rating of at least "A-" and "A3" by S&P and Moody's. If the counterparty or guarantor's rating falls below "A-" or "A3" by either S&P or Moody's, the counterparty or guarantor shall execute a credit support annex to the Qualified Swap Agreement. If the counterparty or the guarantor's long term unsecured rating falls below "Baa1" or "BBB+" by either Moody's or S&P, a replacement counterparty or guarantor, shall be required pursuant to the Qualified Swap Agreement.

SECTION 3.07. Credit Facility Agreements. Without regard to Section 3.04, the City may enter into Credit Facility Agreements or otherwise become obligated for Credit Facility Obligations from time to time. The Credit Facility Agreements shall have a lien on Revenues on a parity with the lien of Parity Obligations.

ARTICLE IV

REVENUES

SECTION 4.01. Pledge of Revenues. All Revenues and any other amounts (including proceeds of the sale of the Bonds) held by the Trustee in any fund or account established hereunder (other than amounts on deposit in the Rebate Fund and the Common Reserve Fund which is hereby pledged solely to the Bonds secured thereby) are hereby irrevocably pledged to the payment of the interest on and principal of the Bonds as provided herein, and the Revenues shall not be used for any other purpose while any of the Bonds remain Outstanding; provided, however, that out of the Revenues and other moneys there may be applied such sums for such purposes as are permitted hereunder including, but not limited to, any payments required pursuant to the 1993 Indenture. This pledge shall constitute a pledge of and charge and lien upon the Revenues and all other moneys held by the Trustee in the funds and accounts established hereunder (other than amounts on deposit in the Rebate Fund and the Common Reserve Fund which is pledged solely to the Bonds secured thereby) for the payment of the interest on and principal of the Bonds in accordance with the terms hereof and thereof; provided, however, that the pledge of Revenues shall in all respects be junior and subordinate to the pledge, lien and security interest of the 1993 Indenture and shall be on a parity with the pledge, lien and security interest of Parity Obligations.

SECTION 4.02. Receipt and Deposit of Revenues in the Revenue Fund. (a) In order to implement the foregoing, the City agrees and covenants that the City will transfer from amounts held by the City in the Surplus Fund created under the 1993 Indenture, in accordance with the terms thereof and hereof, Revenues for deposit in the Revenue Fund, which fund the City agrees and covenants to maintain so long as Bonds shall be Outstanding.

(b) In accordance with the terms of Section 4.03(d) of the 1993 Indenture, the City shall, as soon as practicable in each month, but no later than the last Business Day of such month, withdraw from the Revenue Fund maintained under the 1993 Indenture and transfer for

deposit in the Surplus Fund maintained under the 1993 Indenture the amount, if any, in excess of the sums required to be set aside prior to the immediately succeeding interest payment date by the provisions of paragraphs (a), (b) and (c) of Section 4.03 of the 1993 Indenture. As soon as practicable in each month, but no later than the third Business Day preceding each interest payment date and principal payment date, the City shall transfer to the Revenue Fund held by the City hereunder from the Surplus Fund maintained under the 1993 Indenture, all amounts held in such Surplus Fund.

(c) On and after the date on which no Prior Bonds remain Outstanding, Revenues received by the City shall be deposited when and as received in the Revenue Fund.

SECTION 4.03. Establishment and Maintenance of Funds for Revenues. Subject to Section 5.03, money in the Revenue Fund, after paying as they become due and payable all Maintenance and Operating Costs not otherwise paid pursuant to the 1993 Indenture (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operating Costs the payment of which is not immediately required) shall be transferred by the City to the Trustee in the amounts set forth in clauses (a), (b) and (c) of this Section 4.03 for deposit in the following respective special funds (each of which is hereby created and each of which the City and the Trustee hereby covenant and agree to cause to be maintained) in the following order of priority:

(a) Interest Fund,

(b) Principal Fund,

(c) Common Reserve Fund; and

(d) Surplus Fund

The City shall also, from moneys in the Revenue Fund, pay to the party entitled thereto or transfer or cause to be transferred to any applicable debt service or other payment fund or account for any Parity Obligations, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, on the dates specified in the Issuing Instrument relating to such Parity Obligations, the sum or sums required to be paid or deposited in such debt service or other payment fund or account with respect to principal, premium, if any, and interest on Parity Obligations in accordance with the terms of such Parity Obligations. The Issuing Instrument relating to Parity Obligations may specify any date for the transfer described in the preceding sentence, including but not limited to monthly transfer dates.

(a) Interest Fund. At least two Business Days preceding each Interest Payment Date the City shall transfer from money in the Revenue Fund to the Trustee for deposit to the Interest Fund that amount, if any, needed to increase the amount on deposit in the Interest Fund to equal the aggregate amount of interest becoming due and payable on all Outstanding Bonds on such Interest Payment Date.

All money in the Interest Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

(b) Principal Fund. At least two Business Days preceding each Principal Payment Date, the City shall, from money in the Revenue Fund, transfer to Trustee for deposit in the Principal Fund, that amount, if any, needed to increase the amount on deposit in the Principal Fund to equal the aggregate amount of all sinking fund payments required to be made on such Principal Payment Date into the respective sinking fund accounts for all Outstanding Term Bonds and the aggregate principal amount of all Outstanding Serial Bonds maturing on such Principal Payment Date.

No deposit need be made in the Principal Fund if the amount contained therein is at least equal to the aggregate amount of the principal of all Outstanding Serial Bonds maturing by their terms on such Principal Payment Date plus the aggregate amount of all sinking fund payments required to be made on such Principal Payment Date for all Outstanding Term Bonds.

The Trustee shall establish and maintain within the Principal Fund a separate account for any term Bonds (the "Sinking Account"). With respect to each Sinking Account, on each mandatory sinking account payment date established for such Sinking Account, the Trustee shall apply the mandatory sinking account payment required on that date to the redemption (or payment at maturity, as the case may be) of Term Bonds, upon the notice and in the manner provided in Article II; provided that, at any time prior to selection of Bonds for such redemption, the Trustee may upon the Written Request of the City, apply moneys in such Sinking Account to the purchase of Term Bonds of such series and maturity at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Fund), as may be directed by the City, except that the purchase price (excluding accrued interest) shall not exceed the redemption price that would be payable for such Bonds upon redemption by application of such Mandatory Sinking Account Payment. If, during the twelve-month period immediately preceding said mandatory sinking account payment date, the Trustee has purchased Term Bonds of such series and maturity with moneys in such Sinking Account, such Bonds so purchased shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking account payment, and the City shall provide the Trustee with a revised sinking fund schedule.

All money in the Principal Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds as they shall become due and payable, whether at maturity or redemption, except that any money in any sinking fund account shall be used and withdrawn by the Trustee only to purchase or to redeem or to pay Term Bonds for which such sinking fund account was created.

(c) Reserve Funds; Common Reserve Fund. At least two Business Days preceding each Interest Payment Date, so long as any Bonds are Outstanding, the City shall, from money in the Revenue Fund, transfer to the Trustee for deposit in the Reserve Funds that amount of money which shall be required to maintain the Reserve Funds in the full amount of the Reserve Requirement. Such transfers to the Reserve Funds shall be in an amount which is pro rata among Reserve Funds based on the deficiencies in the Reserve Funds. No deposit need be made in the Reserve Funds so long as there shall be on deposit therein a sum equal to at least the amount required by this Section to be on deposit therein.

All money in the Common Reserve Fund shall be used and withdrawn by the Trustee solely for the purpose of replenishing the Interest Fund or the Principal Fund, in that order, in the event of any deficiency at any time in either of such funds, but solely for the purpose of paying the interest or principal of or redemption premiums, if any, on the Bonds secured by the Common Reserve Fund or for the retirement of all the Bonds secured by the Common Reserve Fund then Outstanding, except that so long as the City is not in default hereunder, any cash amounts in the Common Reserve Fund in excess of the amount required to be on deposit shall be withdrawn from the Common Reserve Fund on the date which is two Business Days preceding each June 1 and December 1, beginning June 1, 2010 and deposited first to the Interest Fund and then to the Principal Fund.

(d) Surplus Fund. All moneys on deposit in the Revenue Fund in excess of the sums required to be set aside prior to the immediately succeeding Interest Payment Date, by the provisions of the foregoing paragraphs (a), (b) and (c), inclusive, shall be set aside and transferred to the Surplus Fund. All moneys in the Surplus Fund shall be used and withdrawn by the City for any lawful purpose of the City.

SECTION 4.04. Establishment and Maintenance of Rate Stabilization Fund.

Rate Stabilization Fund. The City shall maintain and hold a separate fund to be known as the "Rate Stabilization Fund," which fund is hereby established. From time to time the City may deposit in the Rate Stabilization Fund from Current Revenues such amounts as the City shall determine, provided that deposits for each Fiscal Year may be made until (but not after) one hundred fifty (150) days following the end of such Fiscal Year (provided, that on or before April 1, 2010, the City may make an initial deposit in the Rate Stabilization Fund). The City may withdraw amounts from the Rate Stabilization Fund only for transfer to the Revenue Fund for inclusion in Revenues for any Fiscal Year, such withdrawals to be made until (but not after) one hundred fifty (150) days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Current Revenues.

SECTION 4.05. Deposit and Investments of Money in Accounts and Funds. Subject to Section 5.03, all money held by the Trustee in any of the accounts or funds established pursuant hereto shall be invested in Permitted Investments at the Written Request of the City filed with the Trustee at least two (2) Business Days prior to the making of such investments. In the absence of any Written Request of the City, the Trustee may invest any such moneys in Permitted Investments as described in paragraph 7 of the definition thereof provided that as long as the Trustee is The Bank of New York Mellon Trust Company, N.A., the Trustee shall invest such money in the money market fund set forth in the letter of authorization and direction executed by the City and delivered to the Trustee. If no specific money market fund has been specified by the City, the Trustee shall make a request to the City for investment directions. Such moneys shall be held in cash, uninvested, until specific investment directions are provided by the City to the Trustee.. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. The Trustee may act as principal or agent in the making or disposing of any investment. The Trustee shall have no liability or responsibility for any loss resulting from any investment made in accordance with the provisions of this Section, except liability due to the Trustee's negligence or willful misconduct.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law.

Subject to Section 5.03 or as otherwise provided in a Supplemental Indenture, all interest or profits (i) on amounts in the funds and accounts established pursuant to Supplemental Indentures shall be deposited as set forth in the Supplemental Indentures, and (ii) on amounts in the Common Reserve Fund shall be deposited first in the Common Reserve Fund, to the extent necessary to make amounts on deposit therein equal to the Common Reserve Requirement, and then in the Revenue Fund.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.01. Punctual Payment and Performance. The City will punctually pay, exclusively out of the Revenues, the interest on and the principal of and redemption premiums, if any, to become due on every Bond issued hereunder in strict conformity with the terms hereof and of the Bonds, and will faithfully observe and perform all the agreements and covenants to be observed or performed by the City contained herein and in the Bonds.

SECTION 5.02. Against Encumbrances. (A) The City will pay or cause to be paid when due all sums of money that may become due for any labor, services, materials, supplies or equipment furnished to or for the City in, upon, about or relating to the Water System and will keep the Water System free of any and all liens against any portion thereof. In the event any such lien attaches to or is filed against any portion of the Water System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment.

(B) So long as any Bonds are Outstanding, the City will not issue any additional bonds or other obligations under the 1993 Indenture; provided, however, the City may issue refunding bonds pursuant to the 1993 Indenture to refund any or all of the City's 1998 Series A Bonds or 2003 Series A Bonds if the aggregate amount of any and all installments of principal and interest due and payable on such refunding bonds is not greater than the aggregate amount of any and all installments of principal and interest due and payable on the refunded bonds in any Fiscal Year during which any Bonds are then scheduled to be Outstanding.

(C) Nothing in this Indenture shall prevent the City from authorizing and issuing bonds, notes, warrants, certificates or other obligations or evidences of indebtedness which (1) are payable from Revenues after and subordinate to the payment from Revenues of the principal of and interest on the Bonds, or (2) are payable from moneys which are not Revenues.

SECTION 5.03. Tax Covenants; Rebate Fund.

(A) In addition to the accounts created pursuant to Section 4.03, the Trustee shall establish and maintain a fund, separate from any other fund or account established and maintained hereunder, designated as the Rebate Fund. There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Rebate Certificate. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement (as defined in the Rebate Certificate), for payment to the United States of America. Notwithstanding the provisions of Sections 4.01, 4.02, 4.04, 8.02 and 9.01 relating to the pledge of Revenues, the allocation of money in the Revenue Fund, the investments of money in any fund or account, the application of funds upon acceleration and the defeasance of Outstanding Bonds, all amounts required to be deposited into or on deposit in the Rebate Fund shall be governed exclusively by this Section 5.03 and by the Rebate Certificate (which is incorporated herein by reference). The Trustee shall be deemed conclusively to have complied with such provisions if it follows the written directions of the City, and shall have no liability or responsibility to enforce compliance by the City with the terms of the Rebate Certificate. Notwithstanding any provisions herein or in the Rebate Certificate to the contrary, the Trustee may rely conclusively upon the City's determinations, calculations and certifications relating to rebate. The Trustee shall have no responsibility to independently make any calculation or determination or to review the City's calculations hereunder.

(B) The City shall not use or permit the use of any proceeds of Bonds or any funds of the City, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any other action or actions, which would cause any Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code, "private activity bond" within the meaning of Section 141(a) of the Code, or "federally guaranteed" within the meaning of Section 149(b) of the Code and any applicable regulations promulgated thereunder from time to time. The City shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The City shall comply with all requirements of Sections 148 and 149(b) of the Code to the extent applicable to the Bonds. In the event that at any time the City is of the opinion that for purposes of this Section 5.03(B) it is necessary to restrict or to limit the yield on the investment of any moneys held by the Trustee under this Indenture, the City shall so instruct the Trustee under this Indenture in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

(C) The City specifically covenants to comply with the provisions and procedures of the Rebate Certificate.

(D) The City shall not use or permit the use of any proceeds of the Bonds or any funds of the City, directly or indirectly, in any manner, and shall not take or omit to take any action, that would cause any of the Bonds to be treated as an obligation not described in Section 103(a) of the Code.

(E) Notwithstanding any provisions of this Section 5.03 if the City shall provide to the Trustee an Opinion of Counsel that any specified action required under this Section 5.03 is no longer required or that some further or different action is required to maintain

the exclusion from federal income tax of interest on the Bonds, the Trustee and the City may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding Article VII hereof, the covenants hereunder shall be deemed to be modified to that extent.

SECTION 5.04. Against Sale or Other Disposition of Property. The City will sell, transfer or otherwise dispose of any of the facilities of the Water System or any real or personal property comprising a part of the Water System only if such a sale, transfer or other disposition of the facilities or property of the Water System are not material to the operation of the Water System, or shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Water System, or are no longer necessary, material or useful to the operation of the Water System and if such transfer will not reduce the Net Revenues below the requirements to be maintained under Section 5.12 as set forth in a Certificate of the City.

SECTION 5.05. Prompt Acquisition and Construction of the Project. The City will take all necessary and appropriate steps to acquire and construct the Project, with all practicable dispatch and in an expeditious manner and in conformity with law so as to complete the same as soon as possible.

SECTION 5.06. Maintenance and Operation of the Water System; Budgets. The City will maintain and preserve the Water System in good repair and working order at all times and will operate the Water System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable.

Not later than December 31 of each year, commencing December 31, 2010, the City will adopt and send to the Trustee, a Certificate of the City approved by the City Council of the City setting forth the estimated Maintenance and Operation Costs and the estimated payments for Debt Service for the then current Fiscal Year.

SECTION 5.07. Compliance with Contracts. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water System and all other contracts affecting or involving the Water System to the extent that the City is a party thereto.

SECTION 5.08. Payment of Claims. The City will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Revenues or any part thereof prior or superior to the obligation to make payments on the Bonds or impair security for the Bonds.

SECTION 5.09. Insurance. The City will procure and maintain such insurance relating to the Water System which it shall deem advisable or necessary to protect its interests and the interests of the Trustee, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with municipal water conveyance, treatment and supply systems similar to the Water System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with municipal water

conveyance, treatment and supply systems similar to the Water System and is, in the opinion of an Insurance Consultant, financially sound.

SECTION 5.10. Accounting Records and Financial Statements.

The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Water System, which records shall be available for inspection by the Trustee or any Holder of not less than 10% in aggregate principal amount of Bonds Outstanding or their representatives authorized in writing at reasonable hours and under reasonable conditions. The City will prepare and file with the Trustee annually financial statements of the City for the preceding Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon and together with a Certificate of the City to the effect that an Event of Default has not occurred and is continuing under this Indenture. The Trustee shall not be responsible for reviewing any financial statements.

SECTION 5.11. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Water System or any part thereof when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

SECTION 5.12. Amount of Rates, Fees and Charges. The City will fix, prescribe and collect rates, fees and charges for the Water System Service which are reasonable and fair and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to at least one hundred and twenty-five percent (125%) of the estimated Debt Service for such Fiscal Year. The City may make adjustments from time to time in such rates, 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.

SECTION 5.13. Collection of Rates, Fees and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Water System to pay the rates, fees and charges applicable to the Water System Service to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Water System or any facility thereof to be used or taken advantage of, except upon payment of the regularly established rates, fees and charges, by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the City may without charge use the Water System Service.

SECTION 5.14. Eminent Domain and Insurance Proceeds. If all or any part of the Water System shall be taken by eminent domain proceedings, or if the City receives any

insurance proceeds resulting from a casualty loss to the Water System, the Net Proceeds thereof shall be used to substitute other components for the condemned or destroyed components of the Water System.

SECTION 5.15. Indemnity; Prosecution and Defense of Suits. The City, to the extent permitted by law, shall indemnify the Trustee, its directors, officers, employees and agents, and hold them harmless against any loss, claim, liability, expenses or advances, including, but not limited to fees and expenses of counsel and other experts, incurred or made without negligence or willful misconduct on the part of the Trustee arising out of: (i) the Trustee's acceptance or administration of the trust under this Indenture, or the exercise or performance of any of its powers or duties hereunder; (ii) the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design acquisition, installation or construction of the Project or any part thereof; or (iii) 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 made, in light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of the Bonds.

SECTION 5.16. Further Assurances. Whenever and so often as reasonably requested to do so by the Trustee or any Holder, the City will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Holders all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them hereby.

SECTION 5.17. Compliance with 1993 Indenture. So long as any 1998 Series A Bonds or 2003 Series A Bonds are Outstanding, the City hereby covenants and agrees that it will make full and timely payment of the 1998 Series A Bonds and the 2003 Series A Bonds in accordance with the terms of the 1993 Indenture and will comply with all the terms, conditions, covenants and agreements set forth in the 1993 Indenture.

SECTION 5.18. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered a default; however, the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Certificate) or the Holders of at least 25% aggregate principal amount in Outstanding Bonds, upon payment of its fees and expenses, including counsel fees and receipt of indemnification satisfactory to it, shall, or any Holder or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, "Beneficial Owner" means any person which has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

ARTICLE VI

THE TRUSTEE

SECTION 6.01. The Trustee. The Bank of New York Mellon Trust Company, N.A. shall serve as the Trustee for the Bonds for the purpose of receiving all money which the City is required to deposit with the Trustee hereunder and for the purpose of allocating, applying and using such money as provided herein and for the purpose of paying the interest on and principal of and redemption premiums, if any, on the Bonds presented for payment in Los Angeles, California or such other place as designated by the Trustee, with the rights and obligations provided herein. The Trustee shall at all times maintain a principal office in San Francisco or Los Angeles, California or, in the event the Trustee shall not maintain a principal office in San Francisco or Los Angeles, California, the Trustee shall resign pursuant to the provisions of this Section.

The City may at any time, unless there exists any event of default as defined in Section 8.01, remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any such successor shall be a national banking association, bank or trust company having a principal office in San Francisco or Los Angeles, California, having a combined capital (exclusive of borrowed capital) and surplus of (or in the case of a national banking association, bank or trust company included in a bank holding company system, the related bank holding company shall have) at least fifty million dollars ($50,000,000) and subject to supervision or examination by federal or state authority. If such national banking association, bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this section the combined capital and surplus of such national banking association, bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the City and by mailing to the Holders notice of such resignation. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee shall become effective only upon the acceptance of appointment by the successor Trustee, including assumption of all Trustee duties, obligations and covenants under the Indenture. If, within thirty (30) days after notice of the removal or resignation of the Trustee no successor Trustee shall have been appointed and shall have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required hereby.

The Trustee is hereby authorized to redeem the Bonds when duly presented for payment at maturity or on redemption prior to maturity. The Trustee shall cancel all Bonds upon payment thereof or upon the surrender thereof by the City and shall destroy such Bonds and a certificate of destruction shall be delivered to the City. The Trustee shall keep accurate records of all Bonds paid and discharged and cancelled by it.

The City shall from time to time, subject to any agreement between the City and the Trustee then in force and subject to Section 5.15, pay to the Trustee compensation for its services, reimburse the Trustee for all its reasonable advances and expenditures including but not limited to advances to and fees and expenses of independent accountants and counsel or other experts employed by it and reasonably required in the exercise and performance of its rights and obligations hereunder.

The City shall pay reasonable compensation for all services rendered under this Indenture in accordance with the letter proposal from the Trustee approved by the City and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Indenture.

SECTION 6.02. Liability of Trustee. (a) The recitals of facts, agreements and covenants herein and in the Bonds shall be taken as recitals of facts, agreements and covenants of the City, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity hereof or of the Bonds, or shall incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it herein, in the Bonds or in law or equity. The Trustee shall not be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct.

(b) The Trustee shall not be bound to recognize any person as the Holder of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

(c) Whenever in the administration of its rights and obligations hereunder the Trustee shall deem it necessary or desirable that a matter be established or proved prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the City, which certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions hereof to the extent based on reliance thereon, but in its discretion (and subject to Section 5.15) the Trustee may in lieu thereof accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(d) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived), the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill and diligence in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(e) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers appointed with due care, and shall be entitled to advice of counsel concerning all matters of trust and its duty

hereunder. In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely on an Opinion of Counsel conforming to the requirements of this Indenture as full and complete protection for any action taken or suffered by it hereunder in accordance with such Opinion of Counsel.

(f) Except with respect to the Trustee's authentication and registration of the Bonds, the Trustee shall not be responsible for any recital herein, or in the Bonds, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby.

(g) The Trustee may become a Holder of Bonds secured hereby with the same rights and restrictions which it would have if it were not the Trustee; may acquire and dispose of other bonds or evidences of indebtedness of the City with the same rights and restrictions it would have if it were not the Trustee; and may act as a depositary for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Holders of Bonds, whether or not such committee shall represent the Holders of the majority in aggregate principal amount of the Bonds then Outstanding.

(h) The Trustee shall be protected in acting, in good faith and without negligence, upon any notice, request, consent, certificate, order, affidavit, letter, telegram, facsimile or other paper or document believed by it in good faith and without negligence to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith and without negligence pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as a Holder of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the registration books maintained by the Trustee pursuant to Section 2.06.

(i) The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

(j) All notices or other instruments required by this Indenture to be delivered or furnished to the Trustee must, in order to be effective, be delivered at the office of the Trustee in Los Angeles, California.

(k) Notwithstanding any other provision of this Indenture, with respect to any certificate, opinion or other document specifically required by this Indenture to be furnished to the Trustee, the Trustee shall have the duty to examine the same and determine whether or not it conforms to the requirements of this Indenture.

(l) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if it shall have reasonable grounds

for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(m) The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds.

(n) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until it shall have actual knowledge thereof, or shall have received written notice thereof by 25% of the Bondholders at its office in Los Angeles, California. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default thereunder.

(o) The Trustee shall have no responsibility, opinion, or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(p) Before taking any action under Article VIII or this Article at the request of the Holders, the Trustee may require that a satisfactory indemnity bond be furnished by the Holders for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

(q) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 6.01 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

(r) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(s) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(t) The Trustee shall not be deemed to have knowledge of any Event of Default unless and until it shall have actual knowledge thereof by receipt of written notice thereof at its corporate trust office.

(u) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(v) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct.

ARTICLE VII

AMENDMENT OF THE INDENTURE

SECTION 7.01. Amendment of the Indenture. The Indenture and the rights and obligations of the City and of the Holders may be amended at any time by a Supplemental Indenture which shall become binding when the written consent of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 7.02, are filed with the Trustee. No such amendment shall (1) extend the maturity of or reduce the interest rate on or amount of interest on or principal of or redemption premium, if any, on any Bond without the express written consent of the Holder of such Bond, or (2) reduce the percentage of Bonds required for the written consent to any such amendment.

The Indenture and the rights and obligations of the City and of the Holders may also be amended at any time by a Supplemental Indenture which shall become binding upon adoption without the consent of any Holders, but only to the extent permitted by law and after receipt of an approving Opinion of Counsel, for any purpose that will not materially adversely affect the interests of the Holders including (without limitation) for any one or more of the following purposes --

(a) to add to the agreements and covenants required herein to be performed by the City other agreements and covenants thereafter to be performed by the City, or to surrender any right or power reserved herein to or conferred herein on the City;

(b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the City may deem desirable or necessary and not inconsistent herewith;

(c) to add to the agreements and covenants required herein, such agreements and covenants as may be necessary to qualify the Indenture under the Trust Indenture Act of 1939;

(d) to make provisions in connection with the delivery of a Credit Facility; or

(e) to make any other amendment or modification which will not materially adversely affect the interest of the Holders.

The Trustee shall have no obligation to amend this Indenture if such amendment would adversely affect the Trustee.

SECTION 7.02. Disqualified Bonds. Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds provided in this article, and shall not be entitled to consent to or take any other action provided in this article. Upon request of the Trustee, the City shall specify in a certificate to the Trustee those Bonds disqualified pursuant to this section and the Trustee may conclusively rely on such certificate.

SECTION 7.03. Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the City may determine that the Bonds may bear a notation by endorsement in form approved by the City as to such action, and in that case upon demand of the Holder of any Outstanding Bonds and presentation of his Bond for such purpose at the office of the Trustee a suitable notation as to such action shall be made on such Bond. If the City shall so determine, new Bonds so modified as, in the opinion of the City, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Holder of any outstanding Bond a new Bond or Bonds shall be exchanged at the office of the Trustee without cost to each Holder for its Bond or Bonds then Outstanding upon surrender of such Outstanding Bonds.

SECTION 7.04. Amendment by Mutual Consent. The provisions of this article shall not prevent any Holder from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

SECTION 7.05. Attorney's Opinion Re: Supplemental Indenture. The Trustee may obtain an opinion of counsel that any such supplemental indenture complies with the provisions of this Article VII and the Trustee may conclusively rely upon such opinion.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF HOLDERS

SECTION 8.01. Events of Default and Acceleration of Maturities. If one or more of the following events (herein called "Events of Default") shall happen, that is to say:

(a) if default shall be made by the City in the due and punctual payment of the interest on any Bond when and as the same shall become due and payable;

(b) if default shall be made by the City in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed or by proceedings for redemption;

(c) if default shall be made by the City in the performance of any of the agreements or covenants required herein to be performed by the City, and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Trustee; or

(d) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default the Trustee may, and upon the written request of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds then Outstanding, shall, by notice in writing to the City, declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable immediately, and upon any such declaration the same shall become due and payable, anything contained herein or in the Bonds to the contrary notwithstanding. The Trustee shall promptly notify all Holders of any such Event of Default which is continuing. Such notice shall include a reference to or a summary of the rights and remedies available to the Holders as set forth herein.

This provision, however, is subject to the condition that if at any time after the principal of the Bonds then Outstanding shall have been so declared due and payable and before any judgment or decree for the payment of the money due shall have been obtained or entered the City shall deposit with the Trustee a sum sufficient to pay all matured interest on all the Bonds and all principal of the Bonds matured prior to such declaration, with interest at the rate borne by such Bonds on such overdue interest and principal, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of interest on and principal of the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the

Trustee to be adequate shall have been made therefor, then and in every such case the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding, by written notice to the City and to the Trustee, may on behalf of the Holders of all the Bonds then Outstanding rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

SECTION 8.02. Application of Funds Upon Acceleration. All moneys in the accounts and funds provided in Sections 4.02, 4.03 and 4.04 upon the date of the declaration of acceleration by the Trustee as provided in Section 8.01 and all Revenues (other than Revenues on deposit in the Rebate Fund) thereafter received by the City hereunder shall be transmitted to the Trustee and shall be applied by the Trustee in the following order --

First, to the payment of the costs and expenses of the Trustee in providing for the declaration of such Event of Default, including reasonable compensation to its accountants and counsel and any other outstanding fees and expenses of the Trustee, and then to the payment of the costs and expenses of the Holders, if any, in carrying out the provisions of this article, including reasonable compensation to their accountants and counsel;

Second, to the payment of Maintenance and Operation Costs; and

Third, upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid or upon the surrender thereof if fully paid, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with (to the extent permitted by law) interest on the overdue interest and principal at the rate borne by such Bonds, and in case such money shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and (to the extent permitted by law) interest on overdue interest and principal without preference or priority among such interest, principal and interest on overdue interest and principal ratably to the aggregate of such interest, principal and interest on overdue interest and principal.

SECTION 8.03. Institution of Legal Proceedings by Trustee. If one or more of the Events of Default shall happen and be continuing, the Trustee may, and upon the written request of the Holders of a majority in principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Holders of Bonds under this Indenture by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights and duties hereunder.

SECTION 8.04. Non-Waiver. Nothing in this article or in any other provision hereof or in the Bonds shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the interest on and principal of and redemption premiums, if any, on the Bonds to the respective Holders of the Bonds at the respective dates of maturity or upon prior redemption as provided herein exclusively from the Revenues as provided herein pledged for such payment.

A waiver of any default or breach of duty or contract by any Holder shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by any Holder to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Holders by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Holders.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned, the City and any Holder shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 8.05. Actions by Trustee as Attorney-in-Fact. Any action, proceeding or suit which any Holder shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Holders, whether or not the Trustee is a Holder, and the Trustee is hereby appointed (and the successive Holders, by taking and holding the Bonds issued hereunder, shall be conclusively deemed to have so appointed it) the true and lawful attorney-in-fact of the Holders for the purpose of bringing any such action, proceeding or suit and for the purpose of doing and performing any and all acts and things for and on behalf of the Holders as a class or classes as may be advisable or necessary in the opinion of the Trustee as such attorney-in-fact.

SECTION 8.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Holders is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any law.

SECTION 8.07. Limitation on Bondholders' Right to Sue. No Holder of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or equity, for any remedy under or upon this Indenture, unless (a) such Holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default as defined in Section 8.01 hereunder; (b) the Holders of at least a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) said Holders shall have tendered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any owner of Bonds of any remedy hereunder; it being understood and intended that no one or more owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to

enforce any provision of the Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Holders of the Outstanding Bonds.

ARTICLE IX

DEFEASANCE

SECTION 9.01. Discharge of Bonds.

(a) If the City shall pay or cause to be paid or there shall otherwise be paid to the Holders of all Outstanding Bonds the interest thereon and the principal thereof and the redemption premiums, if any, thereon at the times and in the manner stipulated herein and therein, then the Holders of such Bonds shall cease to be entitled to the pledge of and charge and lien upon the Revenues as provided herein, and all agreements, covenants and other obligations of the City to the Holders of such Bonds hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver to the City all money or securities held by it pursuant hereto which are not required for the payment of the interest on and principal of and redemption premiums, if any, on such Bonds or for the payment of any fees and expenses of the Trustee which are then due and remain unpaid.

(b) Any Outstanding Bonds shall prior to the maturity date or redemption date thereof be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this section if (1) in case any of such Bonds are to be redeemed on any date prior to their maturity date, the City shall have given to the Trustee in form satisfactory to it irrevocable instructions to provide notice in accordance with this Indenture, (2) there shall have been deposited with the Trustee either (A) money in an amount which shall be sufficient or (B) Government Securities which are not subject to redemption prior to maturity (including any such Government Securities issued or held in book-entry form on the books of the City or the Treasury of the United States of America), the interest on and principal of which when paid will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient, in the opinion of an Independent Certified Public Accountant, to pay when due the interest to become due on such Bonds on and prior to the maturity date or redemption date thereof, as the case may be, and the principal of and redemption premiums, if any, on such Bonds, and (3) in the event such Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the City shall have given the Trustee in form satisfactory to it irrevocable instructions to mail as soon as practicable, a notice to the Holders of such Bonds that the deposit required by clause (2) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this section and stating the maturity date or redemption date upon which money is to be available for the payment of the principal of and redemption premiums, if any, on such Bonds.

SECTION 9.02. Unclaimed Money. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of any of the Bonds which remains unclaimed for two (2) years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for redemption prior

to maturity, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when such Bonds have become due and payable, shall be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Holders shall not look to the Trustee for the payment of such Bonds; provided, however, that before being required to make any such payment to the City, the Trustee may, and at the request of the City shall, at the expense of the City, cause to be published once a week for two (2) successive weeks in a Financial Newspaper of general circulation in San Francisco and in Los Angeles, California and in the same or a similar Financial Newspaper of general circulation in New York, New York a notice that such money remains unclaimed and that, after a date named in such notice, which date shall not be less than thirty (30) days after the date of the first publication of each such notice, the balance of such money then unclaimed will be returned to the City.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. Liability of City Limited to Revenues. Notwithstanding anything contained herein, the City shall not be required, obligated or liable to advance any money derived from any source other than the Revenues as provided herein for the payment of the interest on or principal of or redemption premiums, if any, on the Bonds or for the performance of any agreements or covenants herein contained except as set forth in Sections 5.16 and 6.01. The City may, however, advance funds for any such purpose so long as such funds are derived from a source legally available for such purpose without incurring an indebtedness.

The Bonds are limited obligations of the City and are payable, as to interest thereon, principal thereof and any premiums upon the redemption of any thereof, exclusively from the Revenues as provided herein, and the City is not obligated or liable to pay them except from the Revenues. All the Bonds are equally secured by a pledge of and charge and lien upon the Revenues, and the Revenues constitute a trust fund for the security and payment of the interest on and principal of and redemption premiums, if any, on the Bonds as provided herein. The Bonds are not a debt or a pledge of the faith and credit of the City, the State of California or any of its political subdivisions, and neither the City, said State nor any of its political subdivisions is liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the City as provided herein. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory limitation or restriction. The Bonds shall not directly or indirectly or contingently obligate the City to levy or pledge any form of taxation whatsoever therefor or to make any appropriation for payment of the Bonds from any funds other than the Revenues.

SECTION 10.02. Benefits of the Indenture Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City, the Trustee and the Holders any right, remedy or claim under or by reason hereof. Any agreement or covenant required herein to be performed by or on behalf of the City or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Trustee, and the Holders.

SECTION 10.03. Successor Is Deemed Included In All References To Predecessor. Whenever herein either the City or any member, officer or employee thereof or of the State of California is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions with respect to the Project that are presently vested in the City or such member, officer or employee, and all agreements and covenants required hereby to be performed by or on behalf of the City or any member, officer or employee thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not. Similarly, whenever the Trustee is named or referred to, such reference shall be deemed to include a successor Trustee appointed pursuant to Section 6.01, and all duties, agreements and covenants required hereby to be performed by or on behalf of the Trustee shall bind and benefit each successor Trustee, whether or not expressed in any document appointing the successor Trustee.

SECTION 10.04. Execution of Documents by Holders. Any declaration, request or other instrument which is permitted or required herein to be executed by Holders may be in one or more instruments of similar tenor and may be executed by Holders in person or by their attorneys appointed in writing. The fact and date of the execution by any Holder or his attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to make acknowledgments of deeds to be recorded in the state or territory in which he purports to act that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer. The ownership of any Bonds and the amount, maturity, number and date of holding the same may be proved by the registration books relating to the Bonds at the office of the Trustee.

Any declaration, request or other instrument or writing of the Holder of any Bond shall bind all future Holders of such Bond with respect to anything done or suffered to be done by the City in good faith and in accordance therewith.

SECTION 10.05. Waiver of Personal Liability. No member, officer or employee of the City shall be individually or personally liable for the payment of the interest on or principal of or redemption premiums, if any, on the Bonds by reason of their issuance, nor shall they be individually or personally liable or accountable by reason of the issuance of the Bonds; but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 10.06. Acquisition of Bonds by City. All Bonds acquired by the City, whether by purchase or gift or otherwise, shall be surrendered to the Trustee for cancellation.

SECTION 10.07. Destruction of Cancelled Bonds. Whenever in this Indenture provision is made for the surrender to or cancellation by the Trustee of any Bonds, the Trustee shall cancel and destroy such Bonds and deliver a certificate of such cancellation and destruction to the City. The City agrees to reimburse the Trustee for costs incurred in connection with any microfilming or making of a permanent record relating thereto.

SECTION 10.08. Content of Certificates. Every Certificate of the City with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any Certificate of the City may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters information with respect to which is in the possession of the City, upon a representation by an officer or officers of the City unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

SECTION 10.09. Publication for Successive Weeks. Any publication required to be made hereunder for successive weeks in a Financial Newspaper may be made in each instance upon any Business Day of the first week and need not be made on the same Business Day of any succeeding week or in the same Financial Newspaper for any subsequent publication, but may be made on different Business Days or in different Financial Newspapers, as the case may be.

SECTION 10.10. Accounts and Funds; Business Days. Any account or fund required herein to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee either as an account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to all such accounts and funds shall at all times be maintained in accordance with the Rebate Certificate and sound accounting practice and with due regard for the protection of the security of the Bonds and the rights of the Holders. Any action required to occur hereunder on a day which is not a Business Day shall be required to occur on the next succeeding Business Day.

SECTION 10.11. Article and Section Headings and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to the Indenture as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 10.12. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Trustee shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof or of the Bonds, and the Holders shall retain all the benefit, protection and security afforded to them under any applicable provisions of law. The City and the Trustee hereby declare that they would have executed and delivered the Indenture and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 10.13. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the City and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the CITY OF FRESNO has caused this Indenture to be signed in its name by its Controller and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed by one of the officers thereunder duly authorized, all as of the day and year first above written.

CITY OF FRESNO

By _____
Controller

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By _____
Authorized Officer

IN WITNESS WHEREOF, the CITY OF FRESNO has caused this Indenture to be signed in its name by its Controller and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed by one of the officers thereunder duly authorized, all as of the day and year first above written.

CITY OF FRESNO

By _____
Controller

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By _____
Authorized Officer

City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 9:00am A
COUNCIL MEETING: June 30, 2011
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER Mark Scott

June 30, 2011

FROM: PATRICK N. WIEMILLER, Director
Department of Public Utilities

BY: MARTIN A. QUERIN, P.E., Assistant Director
Department of Public Utilities – Water Division

SUBJECT: APPROVAL OF THE FOLLOWING ACTIONS RELATING TO ACCEPTANCE OF A $40,000,000 SAFE DRINKING WATER STATE REVOLVING FUND NO INTEREST LOAN THROUGH THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR THE CITY OF FRESNO WATER METER RETROFIT PROJECT

1. ADOPT RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC UTILITIES OR HIS DESIGNEE(S) TO SIGN FUNDING AGREEMENT UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND AND TO APPROVE CLAIMS FOR REIMBURSEMENT AND TO EXECUTE BUDGET EXPENDITURE SUMMARIES AND TO SIGN CONTRACTOR'S RELEASE FORM AND TO SIGN THE CERTIFICATION OF PROJECT COMPLETION; AND DEDICATING DEPARTMENT OF PUBLIC UTILITIES REVENUES FROM USER WATER RATES, FEES OR CHARGES AS THE DEDICATED SOURCE OF REVENUE TO REPAY SAID LOAN

2. APPROVE THIRD AMENDMENT TO AGREEMENT WITH VALI COOPER AND ASSOCIATES, INCORPORATED FOR ADDITIONAL CONSTRUCTION MANAGEMENT SERVICES AND TO MAKE APPLICABLE THOSE REQUIREMENTS OF THE FUNDING AGREEMENT UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND MADE APPLICABLE TO CITY CONTRACTORS FOR THE WATER METER RETROFIT PROJECT

3. APPROVE CONTRACT CHANGE ORDER WITH VULCAN CONSTRUCTION & MAINTENANCE, INCORPORATED FOR INSTALLATION OF METER BOXES, TO MAKE APPLICABLE THOSE REQUIREMENTS OF THE FUNDING AGREEMENT UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND MADE APPLICABLE TO CITY CONTRACTORS FOR THE WATER METER RETROFIT PROJECT

4. APPROVE CONTRACT CHANGE ORDER WITH VULCAN CONSTRUCTION & MAINTENANCE, INCORPORATED FOR INSTALLATION OF METERS, TO MAKE APPLICABLE THOSE REQUIREMENTS OF THE FUNDING AGREEMENT UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND MADE APPLICABLE TO CITY CONTRACTORS FOR THE WATER METER RETROFIT PROJECT

5. APPROVE CONTRACT CHANGE ORDER WITH WEST VALLEY CONSTRUCTION, INCORPORATED FOR INSTALLATION OF METER BOXES, TO MAKE APPLICABLE THOSE REQUIREMENTS OF THE FUNDING AGREEMENT UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND MADE APPLICABLE TO CITY CONTRACTORS FOR THE WATER METER RETROFIT PROJECT

Presented to City Council
Date 6-30-11
Disposition Res. 2011-141, as approved

6. APPROVE CONTRACT CHANGE ORDER WITH BADGER METER, INCORPORATED FOR SUPPLYING OF THE AUTOMATED METER READING SYSTEM, TO MAKE APPLICABLE THOSE REQUIREMENTS OF THE FUNDING AGREEMENT UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND MADE APPLICABLE TO CITY CONTRACTORS FOR THE WATER METER RETROFIT PROJECT

RECOMMENDATIONS

Staff recommends that the City Council:

1. Authorize acceptance of a Safe Drinking Water State Revolving Fund (SDWSRF) No Interest Loan through the California Department of Public Health (CDPH) for the City of Fresno (City) Water Meter Retrofit project in the amount of $40,000,000 ($40-M) for a term of twenty (20) years at an interest rate of zero percent (0%).

2. Adopt a resolution authorizing the Director of Public Utilities or his designee(s) to sign the funding agreement under the SDWSRF and to approve claims for reimbursement and to execute budget expenditure summaries and to sign contractor's release form and to sign the certification of project completion; and dedicating Department of Public Utilities (DPU) revenues from user water rates, fees or charges as the dedicated source of revenue to repay said loan.

3. Approve the third amendment to agreement with Vali Cooper and Associates, Incorporated for additional construction management services and to make applicable those requirements of the funding agreement under the SDWSRF made applicable to City contractors for the Water Meter Retrofit Project.

4. Approve contract change order with Vulcan Construction & Maintenance, Incorporated for installation of meter boxes, to make applicable those requirements of the funding agreement under the SDWSRF made applicable to City contractors for the Water Meter Retrofit Project.

5. Approve contract change order with Vulcan Construction & Maintenance, Incorporated for installation of meters, to make applicable those requirements of the funding agreement under the SDWSRF made applicable to City contractors for the Water Meter Retrofit Project.

6. Approve contract change order with West Valley Construction, Incorporated for installation of meter boxes, to make applicable those requirements of the funding agreement under the SDWSRF made applicable to City contractors for the Water Meter Retrofit Project.

7. Approve contract change order with Badger Meter, Incorporated for supplying of the Automated Meter Reading (AMR) system, to make applicable those requirements of the funding agreement under the SDWSRF made applicable to City contractors for the Water Meter Retrofit Project.

EXECUTIVE SUMMARY

Upon invitation by the CDPH, the City returned a Statement of Intent on October 13, 2010, expressing its interest in submitting an application for funding under the CDPH (Category 'H') – SDWSRF Low Interest

Loan; 2010-2011 Construction (Tier 1) Funding Program. Standard SDWSRF loan terms are typically for a period of twenty (20) years at one-half (1/2) the State bond rates.

The purpose of the SDWSRF loan is to provide a reduced cost funding alternative for the City's Meter Retrofit Project while affording redirection of available revenue to meet current fiscal budgetary challenges.

On February 10, 2011 Council authorized City to submit application for $30,000,000 ($30-M). During the application review period, the CDPH found the City to be eligible as a Disadvantaged Community and as such, project funding was converted to a no-interest (0%) loan. As the total remaining estimated project completion costs were found to be approximately $51.4-million, the funding offer was increased to $40,000,000 ($40-M) and an additional availability of $11.4-million for potential future fiscal funding.

To realize the significant benefits offered through this initial $40-M, no-interest funding opportunity, the funding agreement must be approved and signed by June 30, 2011, in meeting the SRF funding program timelines.

BACKGROUND

In 2004, California passed State Assembly Bill 514 (AB 514). AB 514 requires "urban water suppliers" who receive water from the federal Central Valley Project (CVP) through existing United States Bureau of Reclamation (USBR) water service contracts, to install water meters on all residential service connections on or before January 1, 2013. Currently, the City maintains a contract for 60,000 acre feet of surface water every year from the CVP through the USBR. Failure to install these water meters by the noted date will result in the loss of this contract and a vital water supply. This Assembly Bill further states that water metering and volumetric pricing are among the most "efficient water conservation tools".

Installation of residential water meters is a necessary 'first-step' water conservation measure, which is anticipated to reduce City-wide water demand by 15 percent (15%). As groundwater currently provides approximately 88% of the City's potable water, combined efforts related to conservation and expanded treatment and utilization of contracted surface water for potable use, are imperative to ensure sustainable water supply resources to meet an ever-growing population base.

The Federal Safe Drinking Water Act (SDWA) Amendments of 1996 authorized the creation of a SDWSRF Program. Every three years the United States Environmental Protection Agency (USEPA) conducts a, "Drinking Water Infrastructure Needs Survey and Assessment" to evaluate capital improvement needs for public water systems. SDWSRF program goals reflect both federal and state legislative intent to provide funding for the construction of technically sound drinking water infrastructure projects, which encourage energy efficiency and water conservation measures. According to the SDWSRF Loan Program Intended Use Plan, loan terms are typically for twenty (20) years at one-half (1/2) the State Bond Rate (typically less than, or equal to 2.5%).

Energy efficiencies and anticipated water conservation results from the City's Meter Retrofit Project were identified by the CDPH as having a high ranking potential for funding under the CDPH (Category 'H') – SDWSRF Low Interest Loan 2010-2011 Construction (Tier 1) Funding Program. As such, the City was invited, and responded with a Statement of Intent on October 13, 2010, expressing its interest in submitting an application for funding.

On February 10, 2011, Resolution 2011-18 was approved by Council authorizing submittal of a funding application for $30-M. The City was informed on February 15, 2011, that sufficient information had been submitted, and a detailed application review would be conducted. On March 10, 2011, near completion of

application review, the City was informed that the fundable amount offered through this loan program could be increased to $40-M with an additional $11.4-million available for future fiscal funding.

SDWSRF loan funding will provide a financial avenue to initiate City-wide conservation projects to reduce water demand, ensure the safekeeping of vital contract surface waters which can be used to supplement and restore overused groundwater resources, and afford reallocation of available revenue to meet current fiscal budgetary challenges (a proposed scenario for the reallocation of funds based on receiving the loan is attached to this Report).

The Residential Water Meter Retrofit Project began with funding originating from bonds issued in February 2010. It is planned that the SDWSRF loan proceeds will replace these bond funds in the amount awarded and the replaced bond funds will then be redirected to fund other critical projects for the Water System.

The acceptance of this SDWSRF loan presents an alternative to existing options, significantly minimizing current and future impacts to the City's five-year rate plan, and its long-term financial effect to ratepayers. The current budgetary facts and options related to acceptance of this SDWSRF loan are outlined and summarized below:

On March 31, 2011, and in-lieu of City-wide efforts in conjunction with the City's Utility Advisory Committee (UAC), development of an approved five-year (FY12-FY16) rate plan was delayed. Thereafter, an approved rate plan was anticipated to be developed by October/November (2011). It is now anticipated that rate plan development may be further delayed to January 2012, or later. Adoption of the UAC rate plan scenarios would provide full funding for this loan and the loan would effectively allow funding of some projects included in the UAC plan at a reduced rate. Whether the loan is accepted or not, operation and maintenance (O&M) costs have risen substantially in the FY12, which were not a part of the rate model used to create the UAC proposed plan, which will require additional funding of approximately $1.5-million beyond the current rate funding level, so whether the SDWSRF loan is accepted or rejected, water rates will need to be increased in FY12, or O&M cuts will need to be made.

This situation precipitates three consequential budgetary scenarios related to loan acceptance:

Accept The Loan:
Consequences will result in one of two outcomes based on the Five-Year Water Rate Plan decisions.

1. Accept Loan - with rate increases:

   - In order to avoid dire impacts, the Administration, Council, and ratepayers will be required to provide at least some minimal rate increases over the next five-year period to cover the additional O&M costs and the debt repayment of the $40-M loan. These minimal five-year increases are anticipated to be approximately:

     - 7% in FY12 (almost half of this 7% increase will be needed to cover current O&M increases in the FY12 budget whether the loan is accepted or not)
     - 2% per year in FY13-16.

   - Existing commitments beyond the O&M costs mentioned above will require some form of financing over the next five-years in spite of any CIP approved plan (i.e. $19-million ($19-M) USBR "Repayment Contract" – required repayment by January 1, 2014)

- Potential reallocation and utilization of bond, or pay-as-you-go funding for the USBR Repayment Contract at a substantial savings. The $19-M USBR Repayment Contract mentioned above was planned to be financed at approximately 5%, it could be effectively funded at 0% interest, saving approximately $10-million.

2. Accept Loan – without rate increases:

   - Cuts of approximately $3.5-million/year will need to be implemented in the Water O&M budget. ($1.5-million for O&M cost increases and $2-million for debt payment)

   - These operations and staffing cuts will have severe detrimental effects related to:

     a. City Master Environmental Impact Report, Urban Water Management Plan (UWMP), Metropolitan Regional Water Management Plan (MRWMP) Compliance
     b. Operational Efficiency
     c. Level of Service
     d. Energy Costs
     e. Groundwater Resource Management
     f. CVP - Best Management Practice Compliance

3. Do Not Accept The Loan:
   Consequences are as follows:

   - Increased rates in the future to cover additional financing costs of the interest savings that would not be received from other funding sources.

   - Reduced spending on system improvements in terms of meeting goals outlined in the UWMP, MRWMP, and replacement of the aging distribution infrastructure.

   - Loss of approximately $23-million in interest savings to our ratepayers for work that will eventually need to be borrowed for other projects at potentially higher future rates.

This SDWSRF loan would be repayable from DPU revenues, consisting of user water rates, fees, and charges. Throughout the life of the SDWSRF loan, the City must maintain a debt coverage ration of 1.25 ("Rate Covenant"), meaning net revenues from the water system must equal 125% of the total debt service payable from water system revenues. This calculation will include revenues generated by future rate increase.

The SDWSRF loan would be a parity obligation of the 2010 Water Revenue bonds. Pursuant to the 2010 Water Revenue bond Indenture, issuing an additional parity obligation requires a Certificate of the City, certifying that projected net revenues from the water system over the next five fiscal years equal at least 125% of debt service payable from water system revenues. However, unlike the ongoing Rate Covenant, this certification cannot rely upon future rate increases that have not yet been approved by Council (including any applicable Prop 218 process). Therefore, the projections must be based on the hypothetical scenario with no rate increases for the next five years, which would necessitate cuts to operations and staff, as described in Scenario 2 above. Approval of this no-interest SDWSRF loan will ultimately provide significant ratepayer savings, and a, "pay less now" pathway, in-lieu of a, "pay more later" consequence.

The SDWSRF Funding Agreement has been approved as to form by the CDPH attorneys. Subject to City Attorney's Office approval, the Funding Agreement, Resolution and related documents will be signed by the authorized representatives and processed accordingly.

ENVIRONMENTAL FINDINGS

The Residential Water Meter Retrofit Project has already been environmentally assessed. An environmental assessment was completed and a Negative Declaration ("ND") was adopted by the City Council on June 24, 2008, with a Notice of Determination subsequently filed with the Fresno County Clerk's Office. The installation of meters related to this item was included in the ND Project Description and was environmentally assessed in the initial study resulting in a finding of an ND. Therefore, all necessary environmental review required by CEQA has been completed for the installation of water meters as contemplated by this item.

FISCAL IMPACT

The current FY12 proposed budget is based on the UAC proposed five-year water rate plan, which includes a rate increase of 15% for FY12. The FY12 proposed budget also includes $1.5-million in additional O&M expenses, which were not included in the UAC model and will need to be addressed, whether the SDWSRF loan is accepted or not.

The proposed SDWSRF loan will be repaid from pledged Water System revenues. The annual debt payment will be $2-million/ year for 20 years. There will be no impact on the General Fund or other City funds.

The DPU is currently conducting a five-year rate study to develop recommendations for rates that will adequately fund the Water System. Since it would be anticipated that this loan would provide a means to reallocate funds to other projects currently included in the UAC plan, the net effect of this loan on the proposed five-year water rate plan would be to allow reallocation of 2010 bond proceeds to be used as a source of funds and to reduce costs for the UAC proposed project list off-setting the $1.5-million in increased O&M expenses in the current FY12 proposed budget. The final rate study, with findings and recommendations, will be presented to the City Council for approval.

If the next five-year rate plan does not include minimal rate increases over the next five-years (7-2-2-2-2 percent), then substantial cuts will have to be made depending on the proposed rates in the approved plan. The cost would include approximately $1.5 million for added O&M costs currently in the proposed FY12 budget and the $2 million to satisfy the debt service and the 1.25 Rate Covenant for the $40-M SDWSRF loan.

The funding agreement requires a Federal wage audit and retroactive payment of Federal Davis-Bacon wages going back to October 30, 2009 and going forward. It is anticipated the retroactive costs to the project will be approximately $1.5-million in additional retroactive labor costs and another $1.5-million in labor costs to complete the project. This $3-million in additional labor costs is reimbursable with proceeds from the $40-M loan. After the $23 million of interest savings and these additional labor costs, the estimated net savings to rate payers achieved by taking the SDWSRF loan is approximately $20 million.

Attachment(s):
- Resolution
- SDWSRF Funding Agreement
- Substitution Projects Funding Scenario Summary

City of
FRESNO
DEPARTMENT OF PUBLIC UTILITIES

Providing Life's Essential Services

June 30, 2011

Substitution Projects Funding Scenario Summary
State Revolving Fund No Interest Loan
Residential Water Meter Retrofit Project

a. **Substitution of Meter Project Bond Funds with No-Interest Loan Funds** – The meter project is currently fully funded in the 2010 Water Revenue Bond A-2 Fund. To facilitate expenditure of the loan proceeds, a new State Low Interest Loan Fund would be established and $40.0-million in meter project expenditures would be transferred to this fund. This will free up $40.0-million in the 2010 Water Revenue Bond A-2 Fund, which can then be used to fund other Capital Improvement Projects (CIP's). Per bond counsel "Capital Expenditures means a cost of a Project that is of a type properly chargeable to the capital account of the 2010 Project under general Federal income tax principles. Generally, Capital Expenditures are costs to acquire, construct, or improve property, or to adapt the property to a new or different use. The property must have a useful life longer than one year. Capital Expenditures do not include operating expenses of the 2010 Project or incidental or routine repair or maintenance of the 2010 Project, even if the repair or maintenance will have a useful life longer than one year." See next section for a description of how to facilitate the payment of the Central Valley Project (CVP) 9D contract through a proposal to substitute Water Enterprise Funds.

b. **$40.0- Million in Available Project Transfers**

i. **$16.0- Million CVP 9D Contract** – On December 10, 2010, the City of Fresno (City) and the United States Bureau of Reclamation (USBR) entered into an Agreement (CVP 9D Agreement) for the City to pay off the capital component of the CVP cost of service rate for contracted water delivery by January 31, 2014. By retiring this debt, the City will receive a contract for water service delivery in

perpetuity (contingent upon meeting other requirements of the Agreement). Per bond counsel, the CVP 9D Contract cannot be funded with bond proceeds because it does not meet the requirements for a capital expenditures as it is not a physical asset. Therefore, it will need to be paid for from the Water Enterprise Fund. To accomplish this, it is proposed that $16.0-million in currently proposed projects be transferred from the Water Enterprise Fund CIP to the 2010 Water Revenue Bond A-2 Fund. This will free up $16.0-million for payment of the CVP 9D Contract directly from the Water Enterprise Fund.

1. Exchanging 5% for 0% for this critical financing securing our USBR contract – The interest cost for issuing bonds to obtain $40.0-million in construction funds ($42.0-million total issuance costs) would be an estimated $40.0-million based on a 30 year term at 5.0%.
2. Cannot bond fund directly. See above for discussion of how to fund the CVP 9D Contract.

ii. **Additional Projects**

Related to an initial $40.0-million loan, and three year project completion timeline, other essential CIP projects that may be considered in meeting projected future demand (Urban and Metro Plans) are listed below:

PROJECT	AMOUNT
1. USBR 9D Contract Agreement has been executed (Final payment to be in Jan. 2014) CEQA is complete	$16M
2. Chestnut Pipeline To be completed by November 5, 2012 CEQA in process (should be done midway through FY12)	$8.77M

Pipeline Replacements		AMOUNT
3	Bullard & Millbrook Pipeline Replacement In process	$2.3M
4	Fig Garden Pipeline Replacement (N/O Gettysburg) In process – CEQA to be done at bid award	$2.3M

5	Howard Heights Pipeline Replacement			$3.7M
6	Co. WaterWorks District Pipeline Replacement (Butler & Fowler)			$2.6M

Wellsites

7	PS56A	CEQA Done	(have property)	$0.75M
8	PS238	CEQA to be done	(have property)	$0.75M
9	PS345	CEQA Done	(have property)	$0.75M
10	PS15B	CEQA Done	(have property)	$0.75M
11	PS250A	CEQA to be done	(no property yet)	$0.75M
12	PS52A	CEQA to be done	(no property yet)	$0.75M
13	PS60A	CEQA to be done	(no property yet)	$0.75M

Total Alternate Project Cost Listing: $40.67M

-end-

June 30, 2011

RECEIVED

2011 JUN 30 PM 1:20

CITY CLERK, FRESNO CA

Council Adoption: 06/30/11
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 06/30/11, Council adopted the attached Resolution No. 2011-141 entitled **Authorizing Dir of DPU re: accept loan of $40 million from Safe Drinking Water State Revolving Fund, user water rate, fees or charges to repay loan**, Item No. **9:00 a.m. A-1**, by the following vote:

Ayes	:	Baines, Borgeas, Quintero, Westerlund,
Noes	:	Olivier
Absent	:	Xiong, Brand
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before July 11, 2011. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

****

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearengin, Mayor

Date: 6/30/11

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	: