



MARK B HORTON, MD, MSPH
Director

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



ARNOLD SCHWARZENEGGER
Governor

June 25, 2010

Mr. Alex Ruiz, Interim Public Utilities Director
City of San Diego Public Utilities Department
9192 Topaz Way, MS 901
San Diego, California 92123

Dear Mr. Ruiz:

SAFE DRINKING WATER STATE REVOLVING FUND (SDWSRF) FUNDING
AGREEMENT NO. SRF10CX111, CITY OF SAN DIEGO PROJECT NO. 3710020-028

Enclosed is an executed original Safe Drinking Water State Revolving Fund (SDWSRF) loan funding agreement, No. SRF10CX111 between the City of San Diego and the California Department of Public Health (CDPH). This funding agreement is for a \$12,000,000 loan under the SDWSRF to assist your community in meeting safe drinking water standards for your domestic water supply.

You may have outstanding requirements which must be met prior to disbursement of funds. Please refer to Article A-3 Basic Conditions Precedent and Article C-2 Additional Requirements of your funding agreement for details. If you have any questions, please contact your CDPH District Office at (619) 525-4159 or Jeremy Callihan, Department of Water Resources Associate Analyst, at (916) 653-6273, or by e-mail at jcalliha@water.ca.gov.

Annual inquiries and loan balance questions should be directed to Catrina Jones at (916) 552-8469, or by mail:

Catrina Jones, Accounting Section
California Department of Public Health
Safe Drinking Water State Revolving Fund Program
P.O. Box 997376, MS 1601
Sacramento, California 95899-7376

The State commends the City of San Diego for taking steps to correct the deficiencies that will be remedied by this project in order to provide safe drinking water to your consumers. CDPH wants to assure your successful and timely completion of this

Mr. Ruiz
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project. Therefore, if at any time you encounter unexpected difficulties in meeting requirements of your funding agreement, please contact your CDPH district office as soon as possible.

Sincerely,

Gary H. Yamamoto, P.E., Chief
Division of Drinking Water and
Environmental Management

Enclosures

cc: (See attached list.)

cc: The Honorable Lori Saldana
Member of the Assembly
State Capitol, Room 3152
Sacramento, California 95814

The Honorable Christine Kehoe
Member of the Senate
State Capitol
Sacramento, California 95814

The Honorable Jerry Sanders
Mayor of the City of San Diego
City Administration building
202 C Street, 11th Floor
San Diego, California 92101

Ms. Jeanne Cole, Interim Program Manager
Finance and Information Technology
City of San Diego
Public Utilities Department
9192 Topaz Way MS 901
San Diego, CA 92123

Ms. Lee Ann Jones-Santos, Interim Deputy Director
Finance and Information Technology
City of San Diego
Public Utilities Department
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San Diego, CA 92123

Mr. Wilson Kennedy, Supervising Management Analyst
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Public Utilities Department
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Ms. Kimberly D. Vance, Senior Management Analyst
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San Diego, CA 92123

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Safe Drinking Water Office, Room 816
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Sacramento, California 94236-0001

Mr. Jeremy Callihan
Associate Analyst
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Sacramento, California 94236-0001

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California Department of Public Health
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San Diego, CA 92101

Mr. Thomas Tsui, Regional Coordinator Region IV
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California Department of Public Health
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Glendale, California 91203

Ms. Leah Godsey Walker, Chief
Technical Programs Branch
Division of Drinking Water and
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California Department of Public Health
Post Office Box 997377
Sacramento, CA 95899-7377

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Drinking Water Infrastructure Financing Section
Division of Drinking Water and
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Safe Drinking Water State Revolving
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California Department of Public Health
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Sacramento, California 95899-7413

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California Department of Public Health
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Sacramento, California 95899-7377

Ms. Roxanne Cargill
Technical Support Unit
Division of Drinking Water and
Environmental Management
California Department of Public Health
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Sacramento, California 95899-7377

Ms. Nadine Feletto
Technical Support Unit
Division of Drinking Water and
Environmental Management
California Department of Public Health

Josh Ziese, Project Pipeline Coordinator Safe Drinking Water Program
Project Support Unit
Division of Drinking Water and
Environmental Management
California Department of Public Health
Post Office Box 997377
Sacramento, California 95899-7377

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Construction Loan/Grant
Agreement No. SRF10CX111

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 San Diego (Alvarado)
PROJECT NUMBER 3710020-028

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

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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 SAN DIEGO
PROJECT NUMBER 3710020-028

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 the **City of San Diego**, a public agency, in the County of San Diego, 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", "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 \$60,728,622 (the "Project Cost") of which State agrees that \$12,000,000 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 \$12,000,000 (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 (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 \$48,728,622, ("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 2.3086 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 Public Utilities Department Finance and Information Technology Deputy Director. 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:

Public Utilities Department
Business Support Branch
Finance and Information Technology Deputy Director
City of San Diego
9192 Topaz Way, MS 901
San Diego, California 92123

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 "E" to this Agreement, and provisions of the Single Audit Act as set forth in the Federal Office of Management and Budget (OMB) Circular A-133.

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

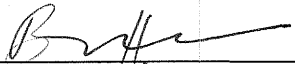
The parties agree that venue of any action between the parties arising out of this Agreement, including disputes that may arise following termination of the Agreement, shall be County of Sacramento, State of California.

DATE OF EXECUTION


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

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

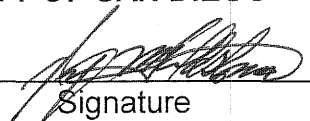
Approved as to Legal Form
and Sufficiency:

By 
Signature
BRAD NAKANO
Print Name
STAFF COUNSEL
Title
JUNE 16, 2010
Date

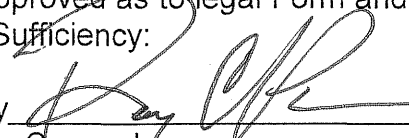
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

By 
Signature Stephen A. Woods
Asst. Dir. Div.
Gary H. Yamamoto Chief
Print Name
Division Chief
Title
6-28-10
Date

SUPPLIER
CITY OF SAN DIEGO

By 
Signature
Jay M. Goldstone
Print Name
COO
Title
202 C Street, MS 11
Address
SAN Diego, CA 92101
6/24/10
Date

Approved as to Legal Form and
Sufficiency:

By 
Counsel
City of San Diego

Date 6/23/2010

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 March 24, 2008. 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 Section 10 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 Labor Code Section 1771.5(b) 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 makes applicable the provisions of 40 USC 3141 et seq. (Davis-Bacon Act) regarding wage rates payable to laborers and mechanics employed by contractors and subcontractors on the Project. Supplier agrees to comply with Davis-Bacon Act requirements, and to include, or cause to be included, in full, the language set forth in Exhibit "D" to this Agreement, 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

ARTICLE A-34. SINGLE AUDIT ACT

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

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 its **Water Enterprise Fund rates, charges and assessments, and financing proceeds** and Supplier hereby pledges said **Water Enterprise Fund rates, charges and assessments, and financing proceeds** as collateral (the "Collateral") to secure repayment of the Loan. Supplier hereby represents and agrees that its pledge of the Collateral shall create and constitute a lien and security interest in the Collateral in accordance with the provisions of Government Code Section 5450, et seq.

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 the **City of San Diego** 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 which **City of San Diego** is obligated to levy or pledge any form of taxation.

EXHIBIT C

SPECIAL REQUIREMENTS

ARTICLE C-1 SECURITY

Supplier grants to State a security interest in all of the following:

- (a) The Collateral, as more fully described in Article B-3, hereof; and
- (b) The Deposit Account, as more fully described in Section 13 of this Agreement.

State reserves the right to require, and Supplier agrees to provide, security in additional 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) Notwithstanding the requirements of Section 13 and Article A-3(e), if the amount set forth in Section 4 "Loan Amount" is zero dollars (\$0.00), Supplier is not required to engage a Fiscal Agent or enter into a Fiscal Services Deposit Account Control Agreement.

(b) The Loan, secured by the Collateral, shall constitute a "Parity Obligation" as defined in that certain Master Installment Purchase Agreement dated as of August 1, 1998, by and between Supplier and the San Diego Facilities and Equipment Leasing Corporation, as amended from time to time.

(c) 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.

(d) Supplier expressly acknowledges and agrees that all references in this Agreement to "Project" include those components or portions of components not funded under this Agreement.

(e) Notwithstanding the time period to complete the Project provided in Article A-8(a), hereof, Supplier shall complete the Project not later than August 30, 2011.

(f) Notwithstanding the minimum accumulation of the Reserve Fund in Article B-4, hereof, supplier shall deposit into the Reserve Fund, no later than the due date of

Supplier's first interest payment to the State, a lump sum reserve amount equal to two semiannual payments for the Loan.

(g) Supplier shall notify CDPH's San Diego District Office prior to any start up testing of the treatment facilities.

(h) In connection with the Project, Supplier shall perform a tracer study during start-up of the ozone system to confirm contact time. Supplier shall submit an ozone contactor tracer study protocol to CDPH's San Diego District Office for review and approval. Supplier shall provide the results of the study to CDPH's San Diego District Office prior to placing the plant into service.

(i) Notwithstanding any other term or provision of this Agreement, Supplier expressly agrees that its obligation to provide the entire Supplier's Cost is not contingent upon the availability of funds from Chapter 4b of the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002.

EXHIBIT D

COMPLIANCE WITH DAVIS-BACON

ARTICLE D-1. DAVIS-BACON PROVISIONS

29 CFR 5.5 - Contract provisions and related matters.

Section Number: 5.5 (commencing with subsection (a)(1))

Section Name: Contract provisions and related matters.

1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 Sec. 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.

(ii)(A) The contracting officer 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 contracting officer shall approve 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 contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer 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 contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt 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 (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the

contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted 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 weekly transmittals. 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 (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), 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 sponsoring government agency (or the applicant, sponsor, or owner).

(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 Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 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 (write the name of the agency) 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 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 (write in the name of the Federal agency) may by appropriate instructions require, 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 the contracting agency, 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)(A) The penalty for making false statements is prescribed in the U.S. Criminal Code 18 U.S.C. 1001.

(B) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(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 Sec. 5.5(a) or 4.6 of part 4 of this title. 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 (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of 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 paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to 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 Agency Head shall cause or require the contracting officer to 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.

EXHIBIT E

COMPLIANCE WITH CROSS-CUTTING FEDERAL AUTHORITIES

ARTICLE E-1. COMPLIANCE WITH FEDERAL AUTHORITIES

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

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

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

ARTICLE E-2. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

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

- (a) During the performance of this Agreement, the contractor agrees as follows:
- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, or age. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Federal Government setting forth the provisions of the Equal Opportunity Clause and the Rehabilitation Act of 1973. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental handicap, or age, and the rights of applicants and employees.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, or age.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding of notice, to be provided by the Federal Government advising the labor union or workers' representative of the contractor's commitments under the Equal Opportunities Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of the Rehabilitation Act of 1973 and of the Federal Executive Order No. 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Federal Executive Order No. 11246, as amended, and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to 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 E-2 in every contract, subcontract or purchase order related to this Agreement unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246, as amended, or section 503 of the Rehabilitation Act of 1973, so that such provisions will be binding upon each contractor, subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor or the Director of Federal Compliance Programs or 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 E-3. PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES

(a) Supplier acknowledges that Executive Orders 11625, 12138, and 12432 are applicable to this Agreement, and that the United States Environmental Agency (EPA) adopted regulations to implement those requirements [40 Code of Federal Regulations Part 33 Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs – {Federal DBE Regulations}]. In compliance with Federal DBE Regulations, 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 7** 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 Transportation, as appropriate; and

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

(b) Supplier agrees that prior to the award of any contract for the procurement of equipment, supplies, construction, or services related to the Project, it has or will review the efforts of such contractor to include disadvantaged business enterprises and will assure State that such contractor has complied with the requirements of this Article E-3. A form for providing said assurance will be provided by State in a form substantially similar to that of **Attachment 8** 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 9**, 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 9**.

(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 10**.)

(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 11** to this Agreement.

ARTICLE E-4. PROCUREMENT PROHIBITIONS

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

ARTICLE E-5. DEBARMENT AND SUSPENSION

Supplier agrees that for purposes of the following subparts (a) and (b), Supplier is the "prospective lower tier participant", and this 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 E-6. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION ACT

Supplier will comply, or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 42 U.S.C. 4655), as amended, which provide for fair and

equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchase.

**ARTICLE E-7. NATIONAL LABOR RELATIONS BOARD CERTIFICATION
(Not applicable if Supplier is a public entity.)**

Supplier, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Supplier within the immediate preceding two-year period because of Supplier's failure to comply with an order of a federal court which orders Supplier to comply with an order of the National Labor Relations Board.



MARK B HORTON, MD, MSPH

Director

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



EDMUND G. BROWN JR.

Governor

January 29, 2011

Ms. Lee Ann Jones-Santos
Interim Deputy Director
Public Utilities Department
Finance and Information Technology
City of San Diego
9192 Topaz Way, MS 901
San Diego, California 92123

Dear Ms. Jones-Santos:

SAFE DRINKING WATER STATE REVOLVING FUND (SDWSRF) FUNDING
AGREEMENT NO. SRF10CX111 AMENDMENT A-1 CITY OF SAN DIEGO (ALVARADO),
PROJECT NO. 3710020-028 (ALVARDO).

Enclosed is an executed original Safe Drinking Water State Revolving Fund loan funding agreement, No. SRF10CX111 Amendment A-1 between City of San Diego and the State of California. This Amendment increases the total project cost from \$60,728,622 to \$61,166,435, increase the supplier's cost from \$48,728,622 to \$49,166,435 and add a special condition.

If for any unforeseen reason you are unable to comply with any of the above requirements, it is the sole responsibility of City of San Diego to notify your San Diego District Office of the California Department of Public Health (CDPH) as soon as possible.

The State commends the City of San Diego for taking steps to correct the deficiencies that will be remedied by this project in order to provide safe drinking water to your consumers. Please contact either your San Diego District Office at (619) 525-4159 or CDPH headquarters at (916) 449-5600 if you have any questions concerning this amendment.

Sincerely,

Leah Godsey Walker, P.E., Chief
Division Drinking Water and
Environmental Management

Enclosures

cc: Mr. Roger S. Bailey
Public Utilities Director
City of San Diego
Public Utilities Department
9192 Topaz Way MS 901
San Diego, CA 92123

Ms. Jeanne Cole
Interim Program Manager
Finance and Information Technology
City of San Diego
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Ms. Kimberly D. Vance
Senior Management Analyst
City of San Diego
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9192 Topaz Way MS 901
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Ms. Heather Collins, Regional Engineer
Division of Drinking Water and
Environmental Management
Northern California Section
California Department of Public Health
464 W. 4th Street, Room 437
San Bernardino, CA 92401

Mr. Sean Sterchi, District Engineer
Division of Drinking Water and
Environmental Management
California Department of Public Health
1350 Front Street, Room 2050
San Diego, CA 92101

Ms. Linda Ng, Chief
Safe Drinking Water Office, Room 816
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001

Mr. Jeremy Callihan, Associate Analyst
Safe Drinking Water Office, Room 816
Department of Water Resources
Post Office Box 942836
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Ms. Lorri Silva
Division of Drinking Water and
Environmental Management

Ms. Bridget Binning, ERU HQ
Division of Drinking Water and
Environmental Management

Joshua Ziese, Project Pipeline Coordinator
Division of Drinking Water and
Environmental Management

Ms. Roxanne Cargill
Division of Drinking Water and
Environmental Management

**Construction Loan
Funding Agreement No. SRF10CX111
Amendment A-1**

STATE OF CALIFORNIA

**HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH**

**AMENDMENT TO
FUNDING AGREEMENT
BETWEEN
THE STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH**

**AND
CITY OF SAN DIEGO (Alvarado)
PROJECT NUMBER: 3710020-028**

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

CITY OF SAN DIEGO
Project Number: 3710020-028
Funding Agreement Number: SRF10CX111
Amendment A-1

In consideration of the covenants and conditions as set forth herein and in that certain Funding Agreement dated June 28, 2010, between the parties referenced above (the "Funding Agreement"), the parties agree to amend the Funding Agreement as follows:

1. SECTION 3 titled "PROJECT COST", is deleted and replaced with:

"Supplier represents that the total cost of the Project is estimated to be \$61,166,435 (the "Project Cost") of which State agrees that \$12,000,000 is eligible for Safe Drinking Water State Revolving Fund financing."

2. SECTION 6 titled "SUPPLIER'S COST", is deleted and replaced with:

"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 \$49,166,435 ("Supplier's Cost"), \$20,000,000 of which shall be funded by other State or Federal Agencies. All of Supplier's Cost not funded by other State or Federal Agencies shall be expended prior to the expenditure of the Loan. The Loan may be drawn before funds provided by other State or Federal Agencies have been expended."

3. The following requirement is added to ARTICLE C-2, titled "ADDITIONAL REQUIREMENTS":

"C-2(j). Supplier represents, and State acknowledges, that the Project construction is complete and Supplier has already paid its contractors. The Loan Amount will be disbursed, pursuant to the provisions of Article A-6, hereof, as reimbursement to Supplier for Eligible Project Costs previously incurred and paid. Supplier further represents, and State acknowledges, that the Project Cost was initially paid by Supplier from its note proceeds which were subsequently refunded by Supplier with its bond proceeds. State acknowledges that funds received as reimbursement for incurred Eligible Project Costs may be used by Supplier at Supplier's discretion."

These modifications are incorporated into and made part of the Funding Agreement. Except as modified herein, all other terms and conditions of the Funding Agreement shall remain in full force and effect.


DATE OF EXECUTION

Date of execution of this Amendment A-1 shall be the date of the latest in time execution by a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment A-1:

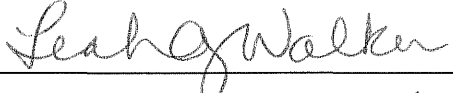
SUPPLIER:

CITY OF SAN DIEGO


By: 
Name: Jay M. Goldstone
Title: Chief Operating Officer
Date: 12/30/10
Address: 202 'C' Street
SAN DIEGO, CA 92101

STATE:

**STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH**

By: 
Name: Leah Godsey Walker
Title: Division Chief
Date: 1/27/11

**Approved as to Legal Form
and Sufficiency:**

By: 
Name: Peter A. Baldrige
Title: Assistant Chief Counsel
Date: 12/8/2010