

STATE REVOLVING FUND LOCAL MATCH LOAN PROGRAM CONTRACT  
BETWEEN THE  
STATE WATER RESOURCES CONTROL BOARD  
AND



MWWDPROG



2010001833

CITY OF SAN DIEGO

CONTRACT NO. 00-826-550-0  
LOAN NO. C-06-4718-110

This Local Match loan contract is made this 2nd day of November, 2000, between the State of California, acting by and through the State Water Resources Control Board, hereafter referred to as the "SWRCB", and the City of San Diego, a municipality of the State of California, hereafter referred to as the "Agency".

WHEREAS:

1. The federal Clean Water Act (33 U.S.C.A. §1251 et seq.) and state law (Division 7, Chapter 6.5, California Water Code) authorize the SWRCB to enter into contracts with municipalities and other public agencies for financial assistance for construction of publicly owned treatment works; and
2. The Agency has made application for a Local Match loan related to construction of the Project hereafter described, and said Project has been determined by the SWRCB to be eligible for a Local Match loan pursuant to applicable federal and state laws, rules, regulations and guidance; and
3. The SWRCB has authorized loan funding for the Project hereafter described. (See SWRCB Resolution No. 2000-049, approved on June 15, 2000).

NOW, THEREFORE, It is Agreed as Follows:

SECTION 1. PROJECT DESCRIPTION

The Project, commonly known as the Point Loma Digesters C1 and C2, will upgrade the existing central anaerobic digesters, C1 & C2 to convert them to primary digesters to meet Section 503 Sludge Regulations for pathogen reduction of Class B Biosolids., as more particularly described in the Local Match loan application of the Agency and the approved plans and specifications for the project.

SECTION 2. INCORPORATION OF DOCUMENTS; ORDER OF PRECEDENCE;  
GENERAL AGENCY COMMITMENTS

This contract incorporates herein, or by reference, the documents listed below. In the event of any inconsistency in the contract documents, except as otherwise specifically provided, the inconsistency shall be resolved by giving precedence in the following order:

- (1) The provisions of this Local Match loan contract document;
- (2) the Local Match loan Contract Special Conditions (**Exhibit A**);
- (3) the Approval to Award letter (**Exhibit B**);
- (4) the Applicable Effluent Limitations and Approved Plans and Specifications (**Exhibit C**);
- (5) the Plans and Specifications Approval letter (**Exhibit D**);
- (6) the Facilities Plan Approval letter (**Exhibit E**);
- (7) the Preliminary Local Match loan Repayment Schedule and any amendments thereto (**Exhibit F**); and
- (8) the Local Match loan Contract Standard Conditions (**Exhibit G**).

The Agency accepts and agrees to comply with all terms, provisions, conditions, and commitments of this contract, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Agency in its application, accompanying documents, and communications filed in support of its request for Local Match loan.

SECTION 3. STATE MATCH ACCOUNT ✓

The Agency will establish a local state match account. The Agency will deposit sufficient funds in the account to make payments to the contractor(s) in an amount equal to the percentage of federal contributions required by the federal Clean Water Act to be matched with state funds (currently 16.667%) and will include the required state match amount in all payments made to the contractor(s).

SECTION 4. ESTIMATED COST OF PROJECT

The estimated reasonable cost of the total Project at the time of Board Approval, including associated planning and design costs, is **ten million one hundred thousand (\$10,100,000)** to the Agency.

SECTION 5. MAXIMUM LOCAL MATCH LOAN AMOUNT

Subject to all of the terms, provisions, and conditions of this contract, and subject to the availability of federal funds, the SWRCB will make a Local Match loan from the State Revolving Fund, created by Water Code Section 13477, in an amount not to exceed **nine million seven hundred nine thousand seven hundred two dollars (\$9,709,702)** to the Agency. This amount is based on the Approval to Award letter from the SWRCB dated April 19, 2000 (Exhibit B), and includes **eight million ninety-one thousand three hundred eighty-six dollars (\$8,091,386)** from the State Revolving Fund Loan Account and **one million six hundred eighteen thousand three hundred sixteen dollars (\$1,618,316)** from the Agency local state match account described in Section 3.

SECTION 6. INTEREST RATE

The Local Match loan interest rate shall be set at zero percent per annum.

SECTION 7. COMPLETION OF PROJECT

The Agency agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Project plans and specifications approved by the SWRCB.

SECTION 8. PROJECT CERTIFICATION

One year after Project completion, the Agency shall certify to the SWRCB whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Agency cannot certify that the Project meets such specifications and limitations at that time, the Agency will, at its own expense and in a timely manner, expeditiously make all needed corrections and perform all additional work necessary to allow affirmative certification for the Project.

Failure to submit an affirmative certification within 15 months, or a negative certification with a corrective action report that meets the above requirements and is satisfactory to the Division within 15 months, of the project completion date will result in an interest penalty of 0.1 percent per day being assessed on the

outstanding Local Match loan balance due. The interest penalty will begin on the first day after expiration of the appropriate deadline.

SECTION 9. DISBURSEMENT

Local Match loan funds will be disbursed in accordance with the disbursement provisions of Exhibit G attached hereto.

SECTION 10. REPAYMENT OF LOCAL MATCH LOAN

Local Match loan funds, including the state match described in Section 3, shall be repaid in accordance with the provisions of Exhibit G, attached hereto, and as indicated in appropriate Local Match loan Repayment Schedules in Exhibit F, also attached hereto.

SECTION 11. DEDICATED SOURCE OF REVENUE

The Agency shall adopt an ordinance or resolution designating a source of revenue for repayment of this Local Match loan. The dedicated source of revenue shall comply with the requirements of the federal Clean Water Act and any applicable federal and state laws, rules and regulations and shall have received SWRCB approval.

The Agency shall at all times maintain sufficient revenue to provide reasonable assurance of repayment of this Local Match loan.

SECTION 12. SUBORDINATION AND FUTURE LOCAL DEBT

- A. The obligation of the Agency to make all payments required by this contract to the SWRCB solely from Net System Revenues is subordinate in right of payment to Parity Obligations existing on the date of execution of this contract and additional Parity Obligations incurred pursuant to Section 11 (B) below.
- B. The Agency may incur additional Parity Obligations (the payments of which are senior or prior in right to the payment by the Agency of its obligations required by this contract (and all other contracts between the Agency and the SWRCB that, by their terms, expressly provide therefore)) provided that:
  - 1. All Parity Obligations (including the Parity Obligations proposed to be incurred) shall have an "A" rating (without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise) or better by at least two nationally recognized rating agencies.
  - 2. The Agency fixes, prescribes and collects rates and charges for the Wastewater Service which will be sufficient to ensure that Net System Revenues to pay the obligations required by this contract are at least 1.1 times the current year's debt service on the obligations required by this contract.
- C. For purposes of this Section and Article 15, Paragraph (D) of Exhibit G the capitalized terms "Net System Revenues" and "Parity Obligations" and "Wastewater Service" shall have the meanings given to such terms in the certain Master Installment Purchase Agreement, dated as of September 1, 1993, between the Agency and the Public Facilities Financing Authority of the City of San Diego, as

originally executed and as it may from time to time be amended or supplemented in accordance with the provisions thereof.

SECTION 13. FINANCIAL MANAGEMENT SYSTEM AND STANDARDS

The Agency agrees to comply with federal standards for financial management systems. The Agency agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracing of Local Match loan funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this contract. To the extent applicable, the Agency agrees to be bound by and to comply with the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502) and Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions.

SECTION 14. ACCOUNTING STANDARDS

The Agency will maintain separate Project accounts in accordance with generally accepted government accounting standards including those contained in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office.

SECTION 15. PROHIBITED CONTRACT

The Agency agrees that it will preclude its contractors and subcontractors from contracting with any party which is debarred, suspended, or otherwise excluded from or ineligible for, participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension".

SECTION 16. COPYRIGHTS

The Agency agrees that the U.S. Environmental Protection Agency shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Local Match loan contract and (b) any rights of copyright which the Agency may purchase where costs of such purchase are reimbursed with Local Match loan funds.

SECTION 17. USER CHARGE SYSTEM

The Agency shall adopt and maintain in effect a user charge system which at all times complies with the requirements of Section 204(b)(1) of the federal Clean Water Act and applicable federal and state rules, regulations and guidelines.

SECTION 18. OPERATION AND MAINTENANCE

The Agency agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable federal and state laws, rules and regulations.

SECTION 19. USEFUL LIFE OF PROJECT

For purposes of this contract, the parties agree that the useful life of the Project is 20 years from and after Project completion.

SECTION 20. ASSIGNABILITY

To the extent permitted by federal and state laws, rules, and regulations, the SWRCB may, assign, grant a security interest in, or otherwise encumber this contract and any right, or rights hereunder, including any payment or payments to be received hereunder.

SECTION 21. STATE REVIEWS AND INDEMNIFICATION

The parties agree that review or approval of Project plans and specifications by the SWRCB is for administrative purposes only and does not relieve the Agency of its responsibility to properly plan, design, construct, operate, and maintain the Project. As between the SWRCB and the Agency, the Agency agrees that it has sole responsibility for proper planning, design, construction, operation, and maintenance of the Project, and the Agency agrees to indemnify the SWRCB, the State of California and their officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to planning, design, construction, operation, or maintenance of the Project.

SECTION 22. TERM

This contract shall take effect upon Department of General Services' approval of the contract, and the contract shall remain in effect for the useful life of the Project or until the date of final Local Match loan repayment, whichever period is longer, unless sooner terminated pursuant to the provisions hereof.

IN WITNESS THEREOF, the parties have executed this contract on the dates set forth below.

City of San Diego  
Agency

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

Authorized Representative

F. D. Schlesinger

Typed Name

Director

Title

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

Designated Representative

George I. Loveland

Typed Name

Senior Deputy City Manager

Title

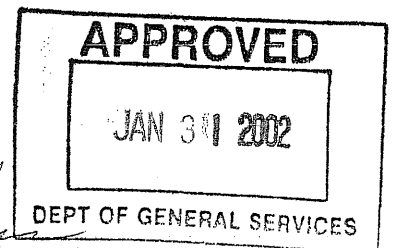
Dated: \_\_\_\_\_

5/8/01

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES

*CAR*



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

\_\_\_\_\_, Chief  
Division of Administrative Services

Dated: \_\_\_\_\_

(Date Stamp)

Dated: \_\_\_\_\_

1-22-02

EXHIBIT A

LOCAL MATCH LOAN CONTRACT SPECIAL CONDITIONS

No special conditions are attached to this loan.

EXHIBIT B

APPROVAL TO AWARD LETTER

See Approval to Award letter dated **February 23, 2001**. This letter explains how the maximum Local Match loan amount, as described in Section 4, was determined.





W. H. Hickox  
Secretary for  
Environmental  
Protection

## Division of Clean Water Programs

1001 I Street • Sacramento, California 95814 • (916) 341-5683  
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120  
FAX (916) 341-5707 • Internet Address: <http://www.swrcb.ca.gov>



Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

FEB 23 2001

CERTIFIED MAIL NO. 7099 3400 0004 7565 5316

Return Receipt Requested

Mr. F. D. Schlesinger, Director  
Metropolitan Wastewater Department  
City of San Diego  
9192 Topaz Way  
San Diego, CA 92123

Dear Mr. Schlesinger:

APPROVAL TO AWARD (ATA) -POINT LOMA WASTEWATER PLANT DIGESTER  
C1 & C2 UPGRADES, CITY OF SAN DIEGO, STATE REVOLVING FUND (SRF)  
LOAN PROJECT NO. C-06-4718-110

We have reviewed the ATA request package submitted with the SRF ATA Form 555-1 executed on January 12, 2001. The Division of Clean Water Programs approves the ATA construction budget request as follows:

CONTRACTOR	AMOUNT BID	APPROVED
Archer western Contractors, LTD	\$8,540,000	\$8,250,000

	REQUESTED	APPROVED
A. Construction	\$8,250,000	\$8,250,000
B. Allowances	\$1,448,800	
1. Planning		\$214,813
2. Design		\$413,795
3. Construction		\$734,109
4. Administration		\$74,250
5. Prime Engineering		\$22,735
6. Value Engineering		\$0
<b>TOTAL</b>	<b>\$9,698,800</b>	<b>\$9,709,702</b>

Refer to the enclosed **Form No. 259** for the construction eligibility calculations.

Please provide this office with a written response within 30 days of the date of this letter stating your agreement or disagreement with this decision.

California Environmental Protection Agency

2-23-01  
URNAME

Guyalt  
2-23-01

RJB  
2/23/01

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Send your response to:

Mr. Fred Johansen  
Administration and Certification Section  
State Water Resources Control Board  
P.O. Box 944212  
Sacramento, CA 94244-2120

If you have not contacted Mr. Johansen within 30 days, this letter will serve as our final decision.

### **DISBURSEMENT SCHEDULE**

1. Within thirty 30 days, please submit to Mr. Pat Lam, at the above address, a preliminary **SRF Disbursement Schedule** (see enclosed format) which shows the estimated monthly amounts to be requested during the construction period. The total should equal the approved SRF ATA budget amount. This is needed to establish a preliminary disbursement schedule for your proposed loan contract.
2. The binding loan commitment takes, approximately, three months to process following your agreement on the **SRF ATA budget**, submittal of a preliminary **SRF Disbursement Schedule** and the completion of any other prerequisites.
3. Please remember that the disbursements for costs incurred prior to the binding loan commitment may be subject to the refinance rules in the SRF Policy.

### **CONSTRUCTION CONTRACT REQUIREMENTS**

1. The enclosed **Notice to Labor Unions or Other Organizations of Workers** must be reproduced in the quantity desired, completed by the contractor, and distributed to all unions and organizations that might represent workers on the job.
2. Mail the following documents to Mr. David Hallstrom at the above address as soon as they become available:
  - A. One copy of the **executed construction contract**;
  - B. One copy of the form (see enclosed format) entitled **Certification of Bond and Insurance Coverage**; and
  - C. One copy of the **Notice to Proceed**.

Mr. F. D. Schlesinger

- 3 -

Recipients of SRF loan assistance are required to report MBE/WBE utilization to the Division. Form **MBE/WBE UR334** and the associated **instructions for completing the UR 334** are enclosed.

When the preconstruction conference is scheduled, please notify Mr. David Hallstrom at (916) 341-5685, so we may participate.

If you have any questions, please contact Mr. Ken Gonzales at (916) 341-5683

Sincerely,

**ORIGINAL SIGNED BY**

Mike Harper, Chief  
Financial and Administration Unit

Enclosures

bcc: Fred Johansen, DCWP  
Robert Been, DCWP  
David Hallstrom, DCWP  
Pat Lam, DCWP  
Eva Kawada, DCWP

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## EXHIBIT C

### APPLICABLE EFFLUENT LIMITATIONS

Incorporated by reference are the following supporting documents:

**Waste Discharge Requirements Order No. 95-106, and NPDES Permit No. CA0107409, adopted by the California Regional Water Quality Control Board, San Diego Region on November 9, 1995.**

### APPROVED PLANS AND SPECIFICATIONS

Incorporated by reference are the Plans and Specifications approved by the Division on **November 2, 2000**, which are the basis for the construction contract to be awarded by the **City of San Diego** to the **Archer Western Contractors, LTD** following competitive advertising.

EXHIBIT D

PLANS AND SPECIFICATIONS APPROVAL LETTER

See the Plans and Specifications approval letter dated November 2nd, 2000 for the Point Loma Digesters C1 and C2 Project.



# State Water Resources Control Board

## Division of Clean Water Programs

1001 I Street • Sacramento, California 95814 • (916) 341-5700 FAX (916) 341-5708  
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120  
Internet Address: <http://www.swrcb.ca.gov>



Gray Davis  
Governor

V. H. Hickox  
Secretary for  
Environmental  
Protection

NOV 2 2000

Mr. F. D. Schlesinger, Director  
Metropolitan Wastewater Department  
City of San Diego  
9192 Topaz Way  
San Diego, CA 92123

Dear Mr. Schlesinger:

FINAL PLANS AND SPECIFICATIONS (P&S) APPROVAL; CITY OF SAN DIEGO (CITY);  
WASTEWATER TREATMENT PLANT DIGESTERS C1 AND C2 UPGRADES (PROJECT);  
STATE REVOLVING FUND LOAN PROGRAM (SRF); PROJECT NO. C-06-4718-110

Thank you for submitting the signed P&S Approval forms and the Project Performance Standards for the City's Project. We hereby approve the Final P&S and will initiate preparation of the loan contract for the subject project.

Prior to receiving the Division of Clean Water Programs' (Division) Approval-to-Award (ATA) the construction contract, the City must complete the following items:

### During Advertisement of Construction Contract and Before the Opening of Bids:

- Correct specifications on equipment or components that do not meet "Sole-Source Requirements." Items that do not comply with Sole-Source Requirements will be ineligible for SRF Loan funding.
- Submit two copies of the As-Advertised P&S (preferably half-size drawings) and all addenda. Clearly note the location, purpose, and estimated cost of any subsequent changes in the final P&S;
- Make the P&S available to bidders for at least 30 days before bid opening;
- Provide all addenda to all potential bidders ten working days prior to the bid opening date; and

### After bid opening

- Assure that the selected bidder is not excluded (debarred) from participating on federally funded programs. You can determine if a contractor bidding on this project is among the list of debarred contractors by contacting Mr. Robert Been, your Design Reviewer, at (916) 341-5641.
- Notify Mr. Been of the Pre-construction meeting in advance of the scheduled date.
- Within five working days after the final selection of the contractor, please submit a complete ATA Request package including:

A. A transmittal letter listing all items enclosed in the submittal;

W. H. HICKOX  
SURNAME  
DWR 540 050 1000

RJB 11/1/00

California Environmental Protection Agency



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NOV 2 2000

Mr. F. D. Schlesinger

- 2 -

- B. A completed "State Revolving Fund Approval To Award Request" form (enclosed); and
- C. All items listed in Section IV of the form.

This package should be sent to Mr. Mike Harper, Financial and Administration Unit Chief, at the following address:

Mr. Mike Harper, Chief  
Financial & Administration Unit  
State Water Resources Control Board  
Division of Clean Water Programs  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

If the mailing cannot be made, please contact Mr. Harper immediately at (916) 341-5820.

Please note that the Final P&S Approval contained herein assumes that the City has obtained the necessary approval(s), permit(s), or exemption(s) from other regulatory agencies, especially where construction activities might affect public health or water quality. This approval does not supersede any Regional Water Quality Control Board or local health department orders or requirements.

If you have any questions regarding this letter or the enclosed P&S Approval forms, please contact Mr. Been by phone or [beenr@cwpswrcb.ca.gov](mailto:beenr@cwpswrcb.ca.gov).

Sincerely,

ORIGINAL SIGNED BY

David Kim, Chief  
Design & Environmental Unit

Enclosures

cc: Mr. Jim Wageman, Senior Engineer  
Metropolitan Wastewater Department

Mr. Stu Seymour, Project Engineer  
Metropolitan Wastewater Department

Mr. Richard Enriquez, Grants Administrator  
Metropolitan Wastewater Department

bcc: Nick Kontos, DCWP Dave Kim, DCWP

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California Environmental Protection Agency



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**CLEAN WATER PROGRAMS  
ADDENDUM APPROVAL FORM**

Project No. SRF Loan No. C-06-4718-110 Date: September 26, 2000  
Applicant City of San Diego  
Address 9192 Topaz Way, San Diego, CA 92123  
Auth. Rep. Mr. F. D. Schlesinger, Director Engineer Mr. Jim Wageman  
Address (same as above) Address (same as above)  
Phone (858) 292-6300 Phone (858) 292-6474  
Project Description Point Loma Wastewater Treatment Plant Digesters C1 & C2 Upgrades

**ADDENDA DESCRIPTIONS:**

Addendum A, dated July 31, 2000:

1. Extension of bid opening date, changes to Contract Documents, Drawings, performance Bond, and Technical Specifications, including additions, deletions, and revisions.

**ADDENDA APPROVAL AND ELIGIBILITY SUMMARY:**

Addendum	SWRCB Approval Date	Est. Eligibility Increase	Est. Eligibility Decrease	Estimated Eligibility Determination
A	September 27, 2000	0%	0%	same as original
Totals		0%	0%	same as original

**APPROVAL BY STATE**

Date <u>10/30/00</u>	Signature <u>R. J. Been FOR Dan Little</u>	Name and Title Daniel J. Little, P.E., Associate Engineer
Date <u>10/30/00</u>	Signature <u>David W. Kim</u>	Name and Title David W. Kim, P.E., Chief, Design Unit



**CLEAN WATER PROGRAMS  
PLANS AND SPECIFICATIONS APPROVAL FORM**

Project No. C-06-4718-110 Date: September 27, 2000

Applicant CITY OF SAN DIEGO, METROPOLITAN WASTEWATER DEPARTMENT

Address 9192 Topaz Way, San Diego, CA 92123

Auth. Rep. Mr. F. D. Schlesinger, Director Engineer Mr. Jim Wageman

Address (same as above) Address (same as above)

Phone (858) 292-6300 Phone (858) 292-6474

Project Description Point Loma Wastewater Treatment Plant Digesters C1 & C2 Upgrades

List the eligible items (identify by bid item and schedule):

The eligibility determinations identified below are based on the review of the final plans and specifications received in this office on August 17, 2000, the Bid Schedule contained in pages 00300-3 and 00300-4 of Contract Documents, the engineer's cost estimate, the contractors low bid, the Facilities Plan Approval letter dated April 24, 2000, and the Addendum dated July 31, 2000.

The eligibility determination for the contract bid items, based on the engineers estimate, and as shown in the Bid Schedule on pages 00300-3 and 00300-4 are as follows:

Bid Item	Description	Low Bid	Percent Eligibility	Eligible \$
1	General Construction	\$8,300,000	100%	\$8,300,000
2	Structural Concrete Epoxy Crack Repair	\$50,000	0% <i>See Condition No. 1</i>	\$0
3	Site Maintenance Activities	\$100,000	0% <i>See Condition No. 1</i>	\$0
4	Allowance for Partnering	\$10,000	0% <i>See Condition No. 1</i>	\$0
5	Allowance for Field Orders	\$100,000	0% <i>See Condition No. 1</i>	\$0
6	Allowance for Unknown Utilities	\$5,000	0% <i>See Condition No. 2</i>	\$0
7	Allowance for Owner Representative Travel and Per Diem Expenses	\$5,000	0% <i>See Condition No. 1</i>	\$0
8	Allowance for Repair of Existing Concrete	\$20,000	0% <i>See Condition No. 1</i>	\$0
	Deduction to Bid Item 1	(\$50,000)		(\$50,000)
Totals		\$8,540,000	96.60%	\$8,250,000

**APPROVAL BY STATE**

Date <u>10/30/00</u>	Signature <u>R. J. Beem</u> <i>FOR Dan Little</i>	Name and Title Daniel J. Little, P.E., Associate Engineer
Date <u>10/30/00</u>	Signature <u>David W. Kirn</u>	Name and Title David W. Kirn, Chief, Design Unit

(CONTINUATION SHEET)

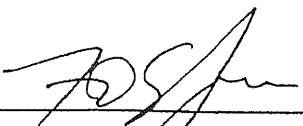
Project No. C-06-4718-110  
Applicant CITY OF SAN DIEGO

CONDITIONS OF APPROVAL

Plans and Specifications for your project are approved with the following conditions:

1. Bid Items 2, 3, 4, 5, 7, and 8 are Incidental to the Contract and may be deleted in their entirety. Therefore, they are not eligible as the work described may not be performed.
2. Bid Item 6 is pre-priced and is therefore ineligible.
3. The review of the Plans and Specifications (P&S) is for eligibility and administrative purposes, and to assess the likelihood that the project will achieve its intended purpose. The structural, mechanical, and electrical aspects of the P&S are not reviewed in detail.
4. Approval of the P&S by the Division of Clean Water Programs does not relieve the City and the design engineer of their legal liability for the adequacy of the design.
5. The Final P&S Approval cannot be issued until the loan applicant's authorized representative has signed and returned this form, the attached Addendum Approval Form, and the attached Project Performance Standards, thus indicating agreement. Final P&S Approval will then be issued under a separate letter with the aforementioned items attached.

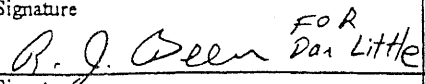

I agree with the above eligibility decisions.

  
F. D. Schlesinger

Authorized Representative

10/25/00  
Date

APPROVAL BY STATE

10/30/00	Signature 	Name and Title Daniel J. Little, P.E., Associate Engineer
Date 10/30/00	Signature 	Name and Title David W. Kim, P.E., Chief, Design Unit

**CLEAN WATER PROGRAMS  
PROJECT PERFORMANCE STANDARDS**

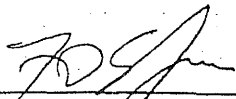
I, F. D. Schlesinger, as the authorized representative for the City of San Diego, hereby agree to the following project performance standards for the Point Loma Wastewater Treatment Plant Digesters C1 & C2 Upgrade Project, State Revolving Fund Loan Number C-06-4718-110:

1. All components of the project shall meet the material, workmanship, and performance standards identified in the contract plans and specifications.
2. Each mechanical component and process unit shall be tested to determine that the performance objectives stated in the specifications and design criteria can be met under full load conditions.

The City shall include this information in the project performance certification report due one (1) year after initiation of operation (See Item 5 below). The report shall include a description of the test conditions and the attained performance of each major item of equipment and process unit.

3. The existing operation and maintenance tracking system must be updated to include all new mechanical and electrical equipment, spare parts, and a record of preventive and corrective maintenance tasks scheduled and performed.
4. A log of the operation and maintenance of each mechanical component shall be maintained for the life of the project.
5. At the end of the one year project performance period, the prime engineer shall prepare a project performance certification report analyzing the ability of the SRF funded facilities to meet above criteria. A Project Performance Certification Report and Certification of Performance shall be submitted to the Division of Clean Water Programs for review.
6. If any correction to the loan funded facilities is necessary, the City shall correct performance problems identified in the prime engineer's report at other than State expense.
7. The City shall comply with the Waste Discharge Requirements, NPDES Permit No. CA0107409, and EPA 40 CFR Part 503 Regulations for Class B biosolids pathogen reduction.

I agree with the project performance standards established above.



Mr. F. D. Schlesinger  
Authorized Representative

10/25/00

Date

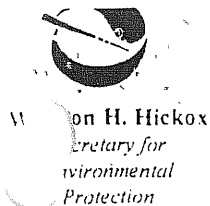
Project No. SRF Loan No. C-06-4718-110

Applicant City of San Diego

EXHIBIT E

FACILITIES PLAN APPROVAL LETTER

See the Facilities Plan Approval letter dated **April 24, 2000**.



# State Water Resources Control Board

## Division of Clean Water Programs

2014 T Street • Sacramento, California 95814 • (916) 227-4400  
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120  
FAX (916) 227-4349 • Internet Address: <http://www.swrcb.ca.gov>



Gray Davis  
Governor

CERTIFIED MAIL NO. Z 444 482 338  
Return Receipt Requested

Mr. F. D. Schlesinger, Director  
Metropolitan Wastewater Department  
600 B Street, Suite 500  
San Diego, CA 92101-4587

Dear Mr. Schlesinger:

FACILITY PLAN APPROVAL: CITY OF SAN DIEGO (CITY) POINT LOMA DIGESTERS  
C1 AND C2 UPGRADE PROJECT, STATE REVOLVING FUND (SRF) LOAN  
NO. C-06-4718-110

In accordance with the State Water Resources Control Board's (SWRCB) February 16, 1995,  
*Policy for Implementing the SRF for Construction of Wastewater Treatment Facilities (Policy)*  
and amended on June 18, 1998, the Division of Clean Water Programs (Division) hereby  
approves the facilities plan for the subject project. Our approval is based on the following  
determinations:

1. Complete project report documentation entitled *Point Loma Wastewater Treatment Plant Master Plan* dated August 1994, the *Final Value Engineering Report for the City of San Diego* dated June 1994, and the *Digester 7&8 Design Concept Report* dated April 1994, and other information including letters dated September 29, 1999, and March 7, 2000, have been submitted and the documentation complies with Section IX.A. of the Policy.
2. The environmental documentation meets all of the environmental review requirements and the Division's Environmental Services Unit approved the documents on April 7, 2000.
3. A draft revenue program was approved by the Division.
4. The City is a signatory to the California Urban Water Conservation Council's Memorandum of Understanding (MOU) Regarding Urban Water Conservation in California.

### PROJECT DESCRIPTION

The City's Point Loma Wastewater Treatment Plant (PLWTP), in its current configuration, has an estimated design treatment capacity of 240 MGD based on the size of the primary clarifiers. The PLWTP provides wastewater treatment for most of the City's metropolitan sewerage area.

USE 2 (Apr 02)  
SURNAME  
DWR 540 REV. 1/96

2/24/02  
4/21/02

Nick  
4/21/02

California Environmental Protection Agency

Recycled Paper

4/21/02  
4/21/02

4/24/02

The current average influent flow to the plant is about 190 MGD. The purpose of this project is to upgrade the existing central anaerobic digesters, C1 and C2, to convert them to primary digesters. They are currently operated as secondary digesters without heat. The upgrade and conversion is necessary to enable digesters C1 and C2 to operate as primary digesters with the same volatile solids destruction capability as the other digesters at the plant, and meet the Section 503 Sludge Regulations for pathogen reduction of Class B Biosolids. The proposed project, when completed and operational, will expand the plant's treatment capacity, including anaerobic digestion, to 219 MGD (year 2020 wastewater flow). The proposed project will include retrofitting the existing digester shells with new ~~concrete~~ <sup>steel</sup> fixed covers replacing the floating steel covers, the addition of gas mixing and sludge heating systems, and minor modifications to the control building.

The Division has made the determination that the items listed below are SRF loan eligible. Where applicable, eligible capacity will be adjusted at the time of plans and specification review and Approval-to-Award (ATA) for the construction contract to account for any changes in the estimated date for initiation of construction.

1. The following items are eligible for a SRF loan:

- A. ~~Installation/construction and necessary modifications to accommodate the retrofit of new~~ <sup>steel</sup> ~~concrete~~ fixed covers for the existing digesters, gas mixing tubes, gas compressors, external heat exchangers, and necessary appurtenances and instrumentation and control systems;
- B. Demolition of existing facilities (e.g. floating digester covers) as needed for installation of new facilities and/or equipment;
- C. Special equipment necessary to maintain the facilities, including the manufacturers list of recommended spare parts;
- D. Necessary insurance related to the construction contract; and
- E. Allowances for planning, design, construction, prime engineering, and administration (see Appendix I of the Policy).

2. The following items are **NOT** eligible for loans:

- A. Sole-sourced equipment without approved justification. Written justification for sole-sourced equipment will be reviewed for eligibility by the Division during the review of the project plans and specifications;
- B. Demolition of existing facilities NOT required to provide space for eligible new facilities;
- C. Construction contingencies;
- D. Construction change orders and claims;

- E. All other items not included in the construction contract except allowances;
  - F. Facilities under construction, if any, prior to the issuance of Final Plans and Specifications (P&S) Approval by the Division; and
  - G. Operation and maintenance costs and extended warranties for equipment and Act of God insurance costs.
3. The eligible design capacity will provide a reserve treatment capacity for 20 years from the date of initiation of construction. The eligible design parameters are:

	<u>Design</u>
Population	2,130,000
Average Annual Flow	219 MGD
Influent TSS Concentration	301 mg/l
Peak 15-day Influent TSS Loading	759,000 lbs./day
Peak VSS Loading to Digesters	376,000 lbs./day
Average Sludge Flow	1.33 MGD
Minimum Detention Time in Digesters	15 days
Average Daily Raw Solids Concentration	
Fed to Digesters	5.5 percent
Minimum VSS Feed Rate	0.12 lbs./cu. Ft.-day

Detailed project component eligibility and eligible component size will be determined during the design review of the P&S and will be consistent with this facilities plan approval letter.

The construction cost of the project is estimated at \$8,883,000 based on the contractors low bid. The estimated loan eligible construction cost is \$8,605,000. The estimated loan eligible total project cost, including engineering and administration allowances, is \$10,122,783.

### PROJECT MILESTONES

This approval is based on submittals according to the following schedule:

Submit loan application	Completed April 18, 2000
Value Engineering Report	Completed June 1994
Submit final P&S	Completed February 2, 2000
Approve P&S	May 15, 2000
Advertise for bids	Completed January 6, 2000
Open bids	Completed March 7, 2000
Submit ATA package	May 15, 2000
ATA	June 1, 2000
Initiate construction (NTP)	June 1, 2000

Submit final revenue plan	July 27, 2002
Complete construction	October 25, 2002
Initiate facilities operation	October 25, 2002
Performance certification	October 25, 2003

Special attention to the project milestones schedule is critical. Schedules must be compatible with requirements of the San Diego Regional Water Quality Control Board (SDRWQCB) enforcement actions related to the planned facilities. Approval of a schedule not compatible with SDRWQCB requirements does not relieve the applicant of its responsibility to achieve compliance with said requirements.

#### INSTRUCTIONS PERTAINING TO THE PREPARATION OF AN SRF LOAN CONTRACT

1. Submit an original or certified copy of a Resolution Designating an Authorized Representative, dedicating a source of funds to repay the loan, and providing Local Match funds; and
2. After Final P&S Approval by the Division and the estimated eligible project costs determined, submit a completed estimated SRF Disbursement Schedule.

Following P&S Approval and SWRCB approval of a preliminary SRF loan commitment, the Division can issue an initial loan contract if the aforementioned items have been submitted and any other outstanding SRF loan program requirements have been met. The Division is targeting the June 15, 2000, SWRCB Workshop for preliminary SRF loan commitment.

#### CONDITIONS OF APPROVAL

This approval includes only the project described above and does not include any associated projects that may have been referred to in the Project Report or environmental documentation. This approval does not guarantee that loan assistance will be awarded for this project;

This letter constitutes a Final Staff Decision. The Division will request that the SWRCB make a preliminary loan commitment for this project's SRF loan **AFTER** an agreement in writing on the eligibility decisions, schedule, and other conditions in this letter have been received from you. To expedite this process, please notify me immediately in writing if you agree with this letter as currently written, so I can start the process to procure the SWRCB approval for a SRF loan for your project.



APR 24 2000

Mr. F. D. Schlesinger

- 5 -

If you are **NOT** in agreement, then you must request a Final Division Decision within 30 days from the date of this letter. Your request should be specific on the items of disagreement, and suggest the exact changes with which you would be in agreement. Please send the request to:

Mr. James D. Kuykendall, Acting Chief  
Division of Clean Water Programs  
P.O. Box 944212  
Sacramento, CA 94244-2120

Again, we **MUST** reach agreement in writing before your proposed project can be scheduled for SWRCB approval of a preliminary funding commitment.

Please contact Mr. Dan Little at (916) 227-4575 or by e-mail at [little@cwpr.swrcb.ca.gov](mailto:little@cwpr.swrcb.ca.gov) if you have any questions or comments regarding this letter.

Sincerely,

ORIGINAL SIGNED BY

F. Wayne Pierson, Acting Chief  
Loans & Grants Branch

cc: Mr. Bob Morris, Senior Engineer  
San Diego Regional Water Regional Water Quality Control Board  
9771 Clairemont Mesa Boulevard, Suite A  
San Diego, CA 92124-1324

bcc: Farouk Ismail, DCWP  
Howard Whitver, DCWP  
Sandy Houck, DCWP  
Mike Harper, DCWP  
Ron Blair, DCWP  
Dan Little, DCWP

Sandy Houck, DCWP  
Nick Kontos, DCWP  
Ame Mathies, DCWP  
Diane Edwards, DCWP  
Ilene Smith, DCWP

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*California Environmental Protection Agency*

EXHIBIT F

SRF LOCAL MATCH LOAN REPAYMENT SCHEDULE

See the attached Preliminary Local Match loan Repayment Schedule dated April 27, 2001. The actual Repayment Schedule will be forwarded to the Agency after all disbursements have been issued.

EXH  
STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
STATE REVOLVING FUND LOCAL MATCH LOAN PRELIMINARY REPAYMENT SCHEDULE

DATE: 27-Apr-01

Recipient: CITY OF SAN DIEGO  
Loan No.: C-06-4718-110  
Contract No.: 00-826-550-0  
Repayment provision: One year after completion of construction  
Construction completion date: July 31, 2002 (estimated)  
Capitalization Grant Funding: Capitalization Grant 2000-2001

LOAN AMOUNT: \$9,709,702  
-Federal Share \$8,091,386 83.333%  
-Local Share \$1,618,316 16.667%  
INTEREST RATE:  
-Original 0.0%

Date	Disbursement/ Repayment	No	Total Eligible	Federal Disbursement	Local/State Match	Period Interest	Repayment	Interest	Principal	BALANCE	Comments
31-May-01	Disbursement*	1	\$2,119,000	\$1,765,827	\$353,173	\$0.00					At least the local/state match amount is to be paid to to contractor prior to submitting each loan disbursement request.  Total Local/State Match recipient contribution: \$1,618,316
30-Jun-01	Disbursement*	2	1,185,000	\$987,497	197,503	0.00					
31-Jul-01	Disbursement*	3	1,414,000	\$1,178,329	235,671	0.00					
31-Aug-01	Disbursement*	4	1,414,608	\$1,178,835	235,773	0.00					
30-Sep-01	Disbursement*	5	1,237,054	\$1,030,874	206,180	0.00					
31-Oct-01	Disbursement*	6	547,000	\$455,832	91,168	0.00					
30-Nov-01	Disbursement*	7	365,000	\$304,165	60,835	0.00					
31-Dec-01	Disbursement*	8	667,055	\$555,877	111,178	0.00					
31-Jan-02	Disbursement*	9	449,000	\$374,165	74,835	0.00					
28-Feb-02	Disbursement*	10	87,000	\$72,500	14,500	0.00					
31-Mar-02	Disbursement*	11	44,997	\$37,497	7,500	0.00					
30-Apr-02	Disbursement*	12	44,997	\$37,497	7,500	0.00					
31-May-02	Disbursement*	13	44,997	\$37,497	7,500	0.00					
30-Jun-02	Disbursement*	14	44,997	\$37,497	7,500	0.00					
31-Jul-02	Disbursement*	15	44,997	\$37,497	7,500	0.00					
31-Jul-03	Principal Balance Due									\$9,709,702.00	
31-Jul-03	Repayment*	1					\$485,485.10	\$0.00	\$485,485.10	9,224,216.90	
31-Jul-04	Repayment*	2					485,485.10	0.00	485,485.10	8,738,731.80	
31-Jul-05	Repayment*	3					485,485.10	0.00	485,485.10	8,253,246.70	
31-Jul-06	Repayment*	4					485,485.10	0.00	485,485.10	7,767,761.60	
31-Jul-07	Repayment*	5					485,485.10	0.00	485,485.10	7,282,276.50	
31-Jul-08	Repayment*	6					485,485.10	0.00	485,485.10	6,796,791.40	
31-Jul-09	Repayment*	7					485,485.10	0.00	485,485.10	6,311,306.30	
31-Jul-10	Repayment*	8					485,485.10	0.00	485,485.10	5,825,821.20	
31-Jul-11	Repayment*	9					485,485.10	0.00	485,485.10	5,340,336.10	
31-Jul-12	Repayment*	10					485,485.10	0.00	485,485.10	4,854,851.00	
31-Jul-13	Repayment*	11					485,485.10	0.00	485,485.10	4,369,365.90	
31-Jul-14	Repayment*	12					485,485.10	0.00	485,485.10	3,883,880.80	
31-Jul-15	Repayment*	13					485,485.10	0.00	485,485.10	3,398,395.70	
31-Jul-16	Repayment*	14					485,485.10	0.00	485,485.10	2,912,910.60	
31-Jul-17	Repayment*	15					485,485.10	0.00	485,485.10	2,427,425.50	
31-Jul-18	Repayment*	16					485,485.10	0.00	485,485.10	1,941,940.40	
31-Jul-19	Repayment*	17					485,485.10	0.00	485,485.10	1,456,455.30	
31-Jul-20	Repayment*	18					485,485.10	0.00	485,485.10	970,970.20	
31-Jul-21	Repayment*	19					485,485.10	0.00	485,485.10	485,485.10	
31-Jul-22	Repayment*	20					485,485.10	0.00	485,485.10	0.00	
			\$9,709,702	\$8,091,386	\$1,618,316		\$9,709,702.00	\$0.00	\$9,709,702.00		

\* Projected disbursements and repayments are subject to recalculation based on actual disbursements.

## EXHIBIT G

## LOCAL MATCH LOAN CONTRACT STANDARD CONDITIONS

ARTICLE 1. DEFINITIONS

- (A) "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
- (B) "Authorized Representative" means the Mayor of a City, the Chairperson of the County Board of Supervisors, the Chairperson of the Board of Directors of the Agency, or another duly appointed representative. For all authorized representatives, a certified original copy of the authorizing resolution that designates the authorized representative, by title, must accompany any contract, the first disbursement request, and any other documents or requests required or allowed under this contract.
- (C) "Completion of construction" means the date, as determined by the Division after consultation with the Agency, that the work of building and erection of the Project is substantially complete.
- (D) "Dedicated source of revenue" means "Net System Revenues".
- (E) "Force Account" means the use of the Agency's own employees or equipment for construction of the Project.
- (F) "Division" means the Division of Clean Water Programs of the State Water Resources Control Board, or any other segment of the SWRCB authorized to administer the State Revolving Fund.
- (G) "Initiation of construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
- (H) "Official Representatives"
  - (1) The SWRCB Local Match loan Coordinator shall be the Division Chief of the Division of Clean Water Programs.
  - (2) The SWRCB Local Match loan Coordinator shall be the SWRCB's representative for administration of the contract and shall have authority to make determinations and findings with respect to any controversy arising under or in connection with interpretation of the contract.
  - (3) The Agency's Authorized Representative shall be **Mr. F. D. Schlesinger, Director**, or his **designee**, who shall administer the contract and who shall have full authority to act on behalf of the Agency, including authority to execute disbursement requests. All communications given to the Agency representative shall be as binding as if given to the Agency.
  - (4) Either party may change its Official Representative upon written notice to the other party.

- (I) "Project completion" means the date, as determined by the Division after consultation with the Agency, that operation of the Project is initiated or is capable of being initiated, whichever comes first.
- (J) "Revenue Program" means a dedicated source of revenue adopted by the Agency which provides for recovery of appropriate capital costs of the Project, generates adequate income to reasonably assure repayment of Local Match loan funds under this contract, generates adequate income to provide for reasonable operation and maintenance of the Project, and provides adequate income for reasonable future expansion and improvement of the Project.

ARTICLE 2. COMPLIANCE WITH LAW, REGULATIONS, ETC.

- (A) The Agency agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Agency agrees that, to the extent applicable, the Agency will:
  - (1) Comply with, the provisions of the adopted environmental mitigation plan for the term of the Local Match loan contract;
  - (2) Comply with, the SWRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities", August 18, 1988 (amended September 20, 1990, January 21, 1993, February, 1995, January 18, 1996 and June 18, 1998); and
  - (3) Comply with, and require its contractors and subcontractors on the Project to comply with federal and state minority and women business enterprise (MBE/WBE) requirements.

ARTICLE 3. AWARD OF CONSTRUCTION CONTRACTS; NOTIFICATION OF AWARD AND INITIATION OF CONSTRUCTION

- (A) The Agency agrees to award the prime construction contract within 180 days (six months) after issuance of the Local Match loan contract. An extension may be granted by the Division.
- (B) The Agency agrees to promptly notify the Division in writing both of the awards of the prime construction contract for the Project and of initiation of construction of the Project. The Agency shall include with the notice of initiation of construction a statement as to the anticipated date of completion of construction of the Project.

ARTICLE 4. CONSTRUCTION ACTIVITIES; NOTIFICATIONS; PROTECTION OF ARCHEOLOGICAL AND HISTORICAL RESOURCES

- (A) The Agency agrees to promptly notify the Division in writing of:
  - (1) Any substantial change in scope of the Project. The Agency agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;

- (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of 30 days or more;
- (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of 90 days or more beyond the estimated date of completion of construction previously provided to the Division;
- (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Agency agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Agency agrees to implement appropriate actions as directed by the Division; and
- (5) Completion of construction of the Project.

ARTICLE 5. PROJECT ACCESS

- (A) The Agency agrees to ensure that the SWRCB, or any authorized representative thereof, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the useful life of the Project.

ARTICLE 6. MBE/WBE REPORTING

- (A) The Agency agrees to report MBE/WBE utilization to the Division on the MBE/WBE Utilization Report, SWRCB Form MBE/WBE UR334. Reports must be submitted to the Division within ten (10) calendar days following the end of each fiscal year quarter until such time as the "Notice of Completion" is issued.

ARTICLE 7. PROJECT COMPLETION; INITIATION OF OPERATIONS

- (A) Upon completion of construction of the Project, the Agency agrees to expeditiously initiate Project operations. At the time of completion of construction, the Division, after consultation with the Agency, will establish a reasonable estimated Project completion date, and the Agency agrees to make all reasonable efforts to meet the date so established. Such date shall be binding upon the Agency unless modified in writing by the Division upon a showing of good cause by the Agency. Extension of the Project completion date by the Division shall not be unreasonably withheld.

ARTICLE 8. REVENUE PROGRAM

- (A) The Agency agrees to prepare and provide an acceptable final Revenue Program to the Division at the time of 90 percent disbursement of Local Match loan funds. Further Local Match loan disbursements may be withheld until an acceptable final Revenue Program is submitted. The Agency further agrees to periodically review and modify the Revenue Program as necessary to assure reasonable adequacy of the Revenue Program. The final Revenue Program and all modifications thereof shall be consistent with applicable guidelines and shall be to the reasonable satisfaction of the Division. The Division may review the Agency's records to assure compliance with the approved Revenue Program at any time during the useful life of the Project.

- (B) The Agency agrees to establish and maintain a Wastewater Capital Reserve Fund (WCRF) for expansion, major repair, or replacement of the wastewater facilities and to maintain the WCRF for the term of the Local Match loan contract. The WCRF shall be maintained in compliance with the *"Policy For Implementing The State Revolving Fund For Construction Of Wastewater Treatment Facilities"* in effect at the time the Local Match loan contract is signed by the Authorized Representative of the Agency. The Agency agrees to submit a report on WCRF activities and status five (5) years after the date of the final revenue program approval by the Division. Updated WCRF reports will be submitted every five-(5) years thereafter until the Local Match loan has been fully discharged. Thereafter, the WCRF will no longer be subject to the requirements of this contract or the above referenced policy. Certification by legal counsel of unused bonding capability for the wastewater enterprise may be used to offset required cash deposits to the WCRF. ✓

ARTICLE 9. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT

- (A) The Agency agrees that it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all or any portion of all remaining Local Match loan funds covered by this contract together with accrued interest, and any penalty assessments which may be due.

ARTICLE 10. REPORTS

- (A) The Agency agrees to expeditiously provide, during construction of the Project and thereafter during the useful life of the Project, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the State Revolving Fund Local Match loan Program or to fulfill any reporting requirements of the federal government.

ARTICLE 11. LOCAL MATCH LOAN DISBURSEMENTS; AVAILABILITY OF FUNDS

- (A) Except as may be otherwise provided in this contract, Local Match loan amounts will be disbursed as follows:
- (1) Upon execution and return of this Local Match loan contract, the Agency may request immediate disbursement of any planning and design allowance included in the Local Match loan amount through submission of Disbursement Request Form 261, or any amendment thereto, duly completed and executed. The planning and design allowance amount due up to the allowance, will be disbursed promptly upon request after approval of this contract by the State Department of General Services;
  - (2) The Agency agrees to submit certification of incurred allowance costs with the allowance pay requests to the Division. The Division will then authorize the disbursement of the federal share of the eligible payment amount;
  - (3) Additional Local Match loan funds will be promptly disbursed to the Agency for disbursement costs incurred by the Agency upon receipt of Disbursement Request Form 261, or any amendment thereto, duly completed and executed. Pursuant to 40 CFR 35.3160(b),

Local Match loan funds for refinanced project costs (costs other than allowances incurred prior to the execution of the Local Match loan contract) or purchase of local debt must be disbursed at a rate no greater than equal amounts spread over the minimum number of quarters required by 40 CFR 35.3155(c).

Disbursement shall not be made more frequently than one a month. The Agency agrees that it will not request disbursement for any Project cost until such cost has been incurred and is due and payable to Project contractors, or before payment of the State Match portion of the eligible invoice amount has been paid to the Project contractors prior to submitting the progress payment request to the Division. Certification of payments must be submitted to the Division with each payment request. The Division will then authorize the disbursement of the federal share of the eligible payment amount;

- (4) Notwithstanding any other provision of this contract, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, rules, or regulations.
- (B) The SWRCB's obligation to disburse any sum to the Agency under any provision of this contract is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. In the event that sufficient funds do not become available for reasons beyond the reasonable control of the SWRCB, such as failure of the federal or state government to appropriate funds necessary for disbursement of Local Match loan amounts, the SWRCB shall not be obligated to make any disbursements to the Agency under this contract. This provision shall be construed as a condition precedent to the obligation of the SWRCB to any disbursements under this contract. Nothing in this contract shall be construed to provide the Agency with a right of priority for disbursement over any other agency. If any disbursements, which are otherwise due to the Agency under this contract, are deferred because of unavailability of sufficient funds, such disbursements will promptly be made to the Agency when sufficient funds do become available.

#### ARTICLE 12. WITHHOLDING OF LOCAL MATCH LOAN DISBURSEMENTS

- (A) The Division may withhold all or any portion of the Local Match loan funds provided for by this contract in the event that:
  - (1) The Agency has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this contract;
  - (2) The Agency fails to maintain reasonable progress toward completion of the Project; or
  - (3) An acceptable Revenue Program is not submitted at the time of 90 percent disbursement of Local Match loan funds.

#### ARTICLE 13. RECORDS

- (A) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted government accounting standards, the Agency agrees to:
  - (1) Establish an official file for the Project, which shall adequately document all significant actions relative to the Project;



- (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Local Match loan funds received under this contract;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Local Match loan funds disbursed under this contract;
  - (4) Establish an accounting system, which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish a Local State Match account prior to issuance of the Local Match loan contract from which the state match portion of the project is being paid. The Agency must deposit sufficient funds in the account as necessary to make payments to the contractor.
  - (6) Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (7) If Force Account is used by the Agency for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect force account costs may be paid with prior written approval by the Division of the Agency's indirect cost proposal.
- (B) The Agency agrees to require Project contractors and subcontractors to maintain books, records, and other material relative to the Project in accordance with generally accepted accounting standards, and to require such contractors and subcontractors to retain such books, records, and other material for a minimum of three years after Project completion. The Agency further agrees to require that such books, records, and other material shall be subject at all reasonable times to inspection, copying, and audit by the SWRCB and by the U.S. Environmental Protection Agency, or any authorized representatives thereof.
- (C) The Agency agrees to retain its Project records for a minimum of three years after Project completion, and for such longer period as may be required for the state to fulfill federal reporting requirements under federal tax statutes and regulations. All Agency records relative to the Project shall be subject at all reasonable times to inspection, copying and audit by the SWRCB and the U.S. Environmental Protection Agency, or any authorized representatives thereof.
- (D) The Agency agrees to furnish the SWRCB with copies of cancelled checks paid to its contractor(s), at least each quarter documenting payment of the state match amount.

ARTICLE 14. FINAL PROJECT REPORTS; AUDIT

- (A) Within 90 days after Project completion, the Agency agrees to submit to the Division a final Project summary report which briefly describes the Project as completed, its features, estimated capacity, and apparent treatment capability. The report shall note any unusual operational problems that have been

encountered and shall indicate whether the Agency expects to be able to certify that the Project meets applicable design specifications and effluent limitations one year after Project completion.

- (B) Within 120 days after Project completion, the Agency agrees to provide to the Division a final cost summary report on the Project. The summary shall include at a minimum, a statement of:
- (1) Total Project costs;
  - (2) Total Project costs which are eligible for Local Match loan funding under the SWRCB's Local Match loan program and this contract;
  - (3) The total amount of Local Match loan funds received;
  - (4) The amount of interest earned, if any, on Local Match loan funds before disbursement on account of incurred Project costs. If no interest has been earned, this fact shall be expressly stated.
- (C) The report shall be accompanied by such other financial information as may be reasonably required by the Division to verify Agency entitlement to Local Match loan funds, to assure program integrity of the State Revolving Fund Local Match loan Program, and to comply with any federal requirements. A duly authorized representative of the Agency shall certify the report as correct.
- (D) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a Certified Public Accountant independent of the Agency and at the cost of the Agency. The audit shall be in the form required by the Division.

#### ARTICLE 15. REPAYMENT; PENALTIES; AGENCY OBLIGATION

- (A) The Local Match loan amount shall be repaid in full not later than 20 years after the completion of construction. Repayment shall be made in 20 annual installments, with the first repayment due one year after the completion of construction, with annual repayment installments due thereafter until the Local Match loan amount has been paid in full.

The repayment amount is based on a standard fully amortized Local Match loan with equal annual repayments. The remaining balance is the previous balance, plus the disbursements, less the repayment. Repayment calculations will be made beginning one year after completion of construction and continuing each year thereafter for 20 years. Exhibit F is a preliminary repayment schedule based on the provisions of this article and an estimated disbursement schedule. The actual repayments will be based on actual disbursements.

- (B) Upon completion of construction of the Project and submission of necessary reports, the Division will prepare an appropriate Local Match loan Repayment Schedule and supply the same to the Agency. The Local Match loan Repayment Schedule may be amended as necessary to accurately reflect amounts due under this contract. Any amended Local Match loan Repayment Schedule that is necessary will be prepared by the Division and furnished to the Agency.

- (C) The Agency agrees to make each Local Match loan repayment on or before the due date therefore, a ten-(10) day grace period will be allowed. A penalty in the amount of one-tenth of one percent (0.1%) per day of the amount due will be assessed for late repayment. If the repayment is not received by the end of the grace period, the penalty will be assessed from the repayment due date. For purposes of penalty assessment, repayment will be deemed to have been made if repayment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the Local Match loan balance, but will be treated as a separate account and obligation of the Agency.
- (D) The Agency as a whole is obligated to make all payments required by this contract to the SWRCB, notwithstanding any individual default by its constituents or others in the payment to the Agency of taxes, assessments, tolls, or other charges levied by the Agency. The Agency shall provide for the punctual payment to the SWRCB of all amounts which become due under this contract and which are received from constituents or others in the payment to the Agency. In the event of failure, neglect or refusal of any officer of the Agency to levy or cause to be levied any tax or assessment necessary to provide payment by the Agency under this contract, to enforce or to collect such tax or assessment, or to pay over to the SWRCB any money collected on the tax or assessment necessary to satisfy any amount due under this contract, the SWRCB may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the levying and collection of the taxes or assessments and the payment of the money collected therefrom to the SWRCB. Action taken pursuant hereto shall not deprive the SWRCB of, or limit the application of, any other remedy provided by law or by this contract.

ARTICLE 16. TERMINATION; IMMEDIATE REPAYMENT

- (A) This contract may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Agency, at the option of the SWRCB, upon violation by the Agency of any material provision of this Local Match loan contract after such violation has been called to the attention of the Agency and after failure of the Agency to bring itself into compliance with the provisions of this contract within a reasonable time as established by the Division.
- (B) In the event of such termination, the Agency agrees, upon demand, to immediately repay to the SWRCB an amount equal to the current balance due on the Local Match loan, and all penalty assessments due.

ARTICLE 17. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS

- (A) In the event that any breach of any of the provisions of this contract by the Agency shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the state to reimburse the federal government by reason of any arbitrage profits, the Agency shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the state due to such breach.

ARTICLE 18. DISPUTES

- (A) Any dispute arising under this contract which is not otherwise disposed of by agreement shall be decided by the Division Chief, or his authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Agency and to the SWRCB's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after

mailing of the Division decision to the Agency, the Agency mails or otherwise furnishes a written appeal of the decision to the SWRCB's Executive Director. The decision of the SWRCB's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Agency shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Local Match loan contract.

- (B) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the SWRCB, or any official or representative thereof, or any question of law.

ARTICLE 19. SWRCB ACTION: COSTS AND ATTORNEY FEES

- (A) The Agency agrees that any remedy provided in this contract is in addition to and not in derogation of any other legal or equitable remedy available to the SWRCB as a result of breach of this contract by the Agency, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this contract by the SWRCB shall not preclude the SWRCB from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this contract, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.

ARTICLE 20. WAIVER

- (A) The parties hereto may, from time to time, waive any rights under this contract unless such waiver is contrary to law, provided that any such waiver must be in writing and must be signed by the party making such waiver.

ARTICLE 21. DRUG-FREE WORKPLACE CERTIFICATION

By signing this contract, the Agency hereby certifies under penalty of perjury under state laws, that the agency will comply with the requirements of the Drug-Free Workplace Act of 1990, and will provide a drug-free workplace by taking the following actions:

- (1) 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.
- (2) Establish a Drug-Free Awareness Program to inform employees about:
  - a. the dangers of drug abuse in the workplace;
  - b. the person's Agency's policy of maintaining a drug-free workplace;
  - c. any available counseling, rehabilitation and employee assistance programs, and,
  - d. penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, that every employee who works on the proposed Local Match loan contract will:
  - a. receive a copy of the Agency's drug-free policy statement; and,

- b. agree to abide by the terms of the Agency's statement as a condition of employment on the Local Match loan contract.
- (B) Failure to comply with these requirements may result in suspension of payments under the Local Match loan contract or termination of the Local Match loan contract or both, and the Agency may be ineligible for award of any future contracts if the Division determines that any of the following has occurred:
  - (1) The Agency has made false certification; or
  - (2) Violated the certification by failing to carry out the requirements as noted above.

ARTICLE 22. PREVAILING WAGES

- (A) The Agency agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. The Agency shall monitor all contracts subject to reimbursement from this Local Match loan contract to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met.

ARTICLE 23. NONDISCRIMINATION CLAUSE

- (A) During the performance of this agreement, the Agency shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, color, ancestry, religious creed, national origin, physical disability, (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Agency shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Agency shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. The Agency shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (B) The Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
- (C) By signing this agreement, the Agency hereby certifies, unless specifically exempted, compliance with Government Code Section 12990(a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. The Agency agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

- (D) By executing this agreement, the signer of this agreement on behalf of Agency swears under penalty of perjury under the laws of the State of California that he/she is duly authorized to legally bind the Agency to the above-described certification.

ARTICLE 24. AMENDMENT

- (A) This contract may be amended at any time by mutual written agreement of the parties.