

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY  
STATE DEPARTMENT OF PUBLIC HEALTH

**FUNDING AGREEMENT**  
BETWEEN  
CALIFORNIA STATE  
DEPARTMENT OF PUBLIC HEALTH  
AND

**CITY OF SAN DIEGO**  
**PROJECT NUMBER: 3710020-066C**

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

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STATE DEPARTMENT OF PUBLIC HEALTH

**FUNDING AGREEMENT**  
BETWEEN  
CALIFORNIA STATE  
DEPARTMENT OF PUBLIC HEALTH  
AND  
**CITY OF SAN DIEGO**  
**PROJECT NUMBER: 3710020-066C**

UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

THIS FUNDING AGREEMENT (this "Agreement") is entered into by and between the California State Department of Public Health ("State") and **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, Chapter 4.5 (commencing with Section 116760), of Part 12 of Division 104 of the 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 Chapter 4 (commencing with Section 116270), of Part 12 of Division 104 of the Health and Safety Code and California Code of Regulations, Title 22, or to address other health concerns (the "Project"). Funds may be used only for such Eligible Project Costs as are approved by State.

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

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

the loan funds by State and shall not be deemed to relieve or restrict Supplier's responsibility.

## SECTION 2. INCORPORATION OF OTHER DOCUMENTS

This Agreement incorporates by this reference all attachments to this Agreement, Exhibit "A", "Standard Conditions"; Exhibit "B", "Security Requirements"; Exhibit "C", "Special Requirements"; Exhibit "D", "Compliance with Davis-Bacon"; Exhibit "E", "New Restrictions on Lobbying"; 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 **\$18,700,000** (the "Project Cost") of which State agrees that **\$18,700,000** 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 **\$15,300,000** (the "Loan").

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

## SECTION 5. GRANT AMOUNT

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



## SECTION 6. SUPPLIER'S COST

Supplier agrees to fund any portion of the Project Cost which is in excess of the Funding. Supplier's cost for this Project is estimated to be **\$3,400,000** ("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 **2.085%** 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 repayment term shall commence on the due date of the first P&I Invoice and expire on the date that is **twenty (20)** years after the due date of the first P&I Invoice (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 **75 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 State 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 State 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 **Supervising Management Analyst**. 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:

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

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

City of San Diego  
Attention: Public Utilities Director  
202 C Street  
San Diego, CA 92101

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.

### 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:

SUPPLIER:  
CITY OF SAN DIEGO

By: [Signature]

Name: Scott Chadwick

Title: COO

Date: 11/30/14

Address: 202 C Street, MS 9A

San Diego, CA 92101

Approved as to Legal Form  
and Sufficiency:

By: [Signature]

Name: Ray C. Palmucci

Title: Deputy City Attorney

Date: 6/11/14

STATE:  
CALIFORNIA STATE  
DEPARTMENT OF PUBLIC HEALTH

By: [Signature]

Name: David M. Mazzera

Title: Acting Division Chief

Date: 6/9/14

Approved as to Legal Form  
and Sufficiency:

By: [Signature]

Name: Peter Baldridge

Title: Assistant Chief Counsel

Date: 6/2/14

## 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 --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;

(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; and

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

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 **January 23, 2014**. 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 5** to this Agreement.

**Supplier must submit an initial claim not later than ninety (90) days following the Date of Execution for all eligible costs incurred prior to Date of Execution.**

Thereafter, Supplier shall submit claims on a monthly basis. Each claim shall include, at a minimum, all eligible costs incurred on or before 60 days prior to the date of the claim. Supplier expressly agrees that State shall have the right to deny disbursement of funds for all costs incurred for which a claim is not timely submitted in accordance with the requirements of this paragraph. Each claim shall include:

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

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



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

(b) Disbursements. Following 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 in violation of this Agreement;

(2) It is submitted without signature or 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 6**.

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 California State 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 7** 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 three (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 (the "P&I Invoice"). The P&I 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 due date of the first P&I Invoice.

(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 hereto, 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 Uniform Commercial Code;

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

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

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

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

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

#### ARTICLE A-28. DRUG-FREE WORKPLACE CERTIFICATION

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

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

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

- (1) The dangers of drug abuse in the workplace;
- (2) The person's or organization's policy of maintaining a drug-free workplace;
- (3) Any available counseling, rehabilitation and employee assistance programs; and
- (4) Penalties that may be imposed upon employees for drug abuse violations.

(c) Every employee who works on the Project:

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

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

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

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

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

#### ARTICLE A-30. ADDITIONAL INSURED

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

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

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

#### ARTICLE A-32. LABOR COMPLIANCE

Supplier shall comply with Public Resources Code Section 75075 regarding labor compliance programs (as such term is defined in California Labor Code Section 1771.5(c), "Labor Compliance Programs"), and all applicable implementing guidelines and regulations adopted by California Department of Industrial Relations. Supplier's failure or refusal to comply with this requirement shall be considered a material breach of this Agreement.

#### ARTICLE A-33. DAVIS-BACON ACT COMPLIANCE

Supplier understands and acknowledges that Pub.L 111-88 and Section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) make applicable provisions of

sections 3141-3144, 3146, and 3147 of Title 40 of United States Code ("Davis-Bacon Act") and applicable regulations and guidance regarding wage rates payable to laborers and mechanics employed by contractors and subcontractors on the Project.

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

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

Supplier shall send a report to State at the end of each calendar quarter and on a form acceptable to the State, in which Supplier shall certify to State that all applicable Davis-Bacon Act requirements for the Project are being complied with, including, without limitation, the requirement that Supplier certify to State that Supplier is collecting and reviewing certified Davis-Bacon payrolls from Supplier's construction contractors.

Supplier's failure to provide the quarterly reports required by this Article A-33 may result in State's withholding Disbursements until the reports are provided in a form acceptable to the State.

#### ARTICLE A-34. NEW RESTRICTIONS ON LOBBYING

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

#### ARTICLE A-35. ADDITIONAL REPORTING

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

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

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

#### ARTICLE A-37. BUY AMERICAN REQUIREMENT

Federal law requires that all iron and steel products used in the Project must be produced in the United States unless compliance is exempted or waived. The Supplier shall not use the Funding to purchase "iron and steel products" produced outside of the United States unless the Supplier has obtained a waiver from USEPA on file with the State. Unless exempted or under a valid waiver, the Supplier hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. Supplier agrees to comply with all record keeping and reporting requirements under the SDWSRF, including any reports required by a federal agency or finance authority, such as performance indicators, cost information and project status. The Supplier understands that (i) each contract and subcontract related to the Project is subject to these requirements and to audit by appropriate federal and state authorities, and (ii) failure to comply with these requirements may be deemed a default hereunder.

#### ARTICLE A-38. EPA SIGNAGE REQUIREMENT

Supplier, as a condition of funding for the Project, must display and maintain a sign at the main Project construction site that complies with the terms of this Article A-38. The sign must contain the United States Environmental Protection Agency's (EPA) logo in a manner that informs the public that the Project received funding from the Safe Drinking Water State Revolving Fund (SDWSRF). The EPA logo must not be used in a manner that implies that the EPA is constructing the Project, and must always be accompanied by statement that the Project received financial assistance from the SDWSRF, and that the SDWSRF is financially supported by the EPA and by the State. Signs must be maintained in good condition until the Project Completion Date. All costs associated with the signs must be reasonable to be considered Eligible Project Costs.

## 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 financed, 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 **Water Utility fund rates, charges and assessments ("Water Utility Fund")**, and Supplier hereby pledges said **Water Utility Fund**, and all revenue designated thereto, 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 ten (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, hereof.

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

#### ARTICLE C-2 ADDITIONAL REQUIREMENTS

(a) Commencing with construction of the Project and continuing throughout the reasonably expected useful life of the Project (as provided in Section 12, hereof), Supplier shall implement practices substantially equivalent to the urban water conservation "best management practices" of the California Urban Water Conservation Council.

(b) Supplier shall not award a Design-Build contract for the Project until the proposed firm and the solicitation process is reviewed and approved by State's **San Diego** and/or **Santa Ana** District Office.

(c) Supplier shall notify the State's **San Diego and Santa Ana District Office** when the Project is fifty percent (50%) complete.

(d) Supplier shall notify the State's **San Diego and Santa Ana District Office** prior to any start-up testing of the Project facilities.

(e) The City of San Diego shall implement the mitigation measures identified in the Mitigated Negative Declaration and Addendum, titled Citywide Pipeline Replacement Project (SCH# 2011091045) prepared for the project.

(f) Supplier agrees to maintain water rates and charges in amounts sufficient to generate and maintain annual gross revenues equal to at least 1.2 times its total annual debt service (the "Debt Coverage Ratio"); and agrees to maintain, at all times, the Debt Coverage Ratio until all amounts due to State under the terms of this

Agreement have been repaid in full. Supplier expressly agrees to provide State with a copy of Supplier's certified financial statements evidencing Supplier's satisfaction of the Debt Coverage Ratio within 20 days following State's written request.

(g) 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.

(h) Supplier shall report annually to State headquarters, Technical Program Branch, Safe Drinking Water State Revolving Fund Program, the annual debt service coverage for both Parity Obligations and Subordinate Obligations (as defined in that certain Master Installment Purchase Agreement dated as of August 1, 1998) in the Comprehensive Annual Financial Report, until the Loan and any interest owed thereon, is fully repaid.

(i) With the exception of Parity Obligations, Supplier shall not issue debt secured with a lien on water revenues having priority to the lien provided as security for this SDWSRF loan.

## EXHIBIT D

### COMPLIANCE WITH DAVIS-BACON

#### ARTICLE D-1. DAVIS-BACON PROVISIONS

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

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

If Supplier is a governmental entity (including, without limitation, a city, county, city and county, or local agency), the applicable contract language that is required is set forth in Section I of **Attachment 8**. If Supplier is not a governmental entity, the applicable contract language that is required is set forth in Section II of **Attachment 8**.

## EXHIBIT E

### NEW RESTRICTIONS ON LOBBYING

#### ARTICLE E-1. NEW RESTRICTIONS ON LOBBYING

##### 40 CFR Part 34 – New Restrictions on Lobbying

##### Subpart A—General

##### §34.100 Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

#### §34.105 Definitions.

For purposes of this part:

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

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

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### §34.110 Certification and disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

#### Subpart B—Activities by Own Employees

##### §34.200 Agency and legislative liaison.

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

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

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

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

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

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

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

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

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

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

#### §34.205 Professional and technical services.

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

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

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

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

#### §34.210 Reporting.

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

## Subpart C—Activities by Other Than Own Employees

### §34.300 Professional and technical services.

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

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

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

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

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

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

#### Subpart D—Penalties and Enforcement

##### §34.400 Penalties.

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

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

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

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

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

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

##### §34.405 Penalty procedures.

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

#### §34.410 Enforcement.

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

#### Subpart E—Exemptions

#### §34.500 Secretary of Defense.

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

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

#### Subpart F—Agency Reports

#### §34.600 Semi-annual compilation.

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

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

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

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

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

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

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

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

#### §34.605 Inspector General report.

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

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

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

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