



Clean Water
State Revolving Fund

CITY OF MODESTO

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



Water Boards

PROJECT FINANCE AGREEMENT

STATE REVOLVING FUND PROJECT NO. C-06-5175-210

AGREEMENT NO. 11-825-550

AMOUNT: \$130,000,000

TERM DATES: AUGUST 26, 2011 – JUNE 1, 2035

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This Project Finance Agreement (including all exhibits and attachments hereto, this "Agreement") is dated as of the date set forth on the first page of this Agreement, by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (the "State Water Board"), and the local agency identified on the first page of this Agreement, duly organized and existing under the laws of the State of California (the "Recipient"):

WITNESSETH:

WHEREAS, the United States of America, pursuant to Title VI of the federal Water Pollution Control Act (as such has been and may be amended from time to time, the "Clean Water Act") requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Clean Water Act; and

WHEREAS, the State of California (the "State") has established a Clean Water State Revolving Fund ("CWSRF") pursuant to Chapter 6.5 of Division 7 of the California Water Code (the "State Act") to be used for purposes of the Clean Water Act; and

WHEREAS, the State Water Board has the responsibility to administer the CWSRF and to provide financial assistance from the CWSRF to recipients for the construction of eligible projects, as provided in the State Act; and

WHEREAS, the State Water Board is responsible under the Clean Water Act and the State Act for determining the eligibility of projects for financial assistance from the CWSRF, determining a reasonable schedule for financing and construction of projects, and for ensuring compliance with the Clean Water Act and the terms and conditions of an applicable project finance agreement; and

WHEREAS, the Recipient has submitted to the State Water Board an application for financial assistance from the CWSRF, for the purpose of financing or refinancing the Project described below, and the State Water Board has reviewed and approved said application; and

WHEREAS, the Recipient has or will incur costs incurred in connection with, the planning, design, acquisition, construction and installation of the project or projects described in Exhibit A hereto (such projects being herein collectively referred to as the "Project"); and

WHEREAS, on the basis of the Recipient's application and the representations and warranties set forth herein, the State Water Board proposes to assist in the financing of the costs of the Project and/or to refund outstanding bonds, notes or other debt obligations of the Recipient, if any, issued to finance the Project, and the Recipient desires to participate as a recipient of financial assistance from the CWSRF and evidence its obligation to repay, which obligation will be secured by Net Revenues (herein defined), upon the terms and conditions as hereinafter set forth in this Agreement, all pursuant to the Clean Water Act;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions.

Unless otherwise specified, each capitalized term used in this Agreement (including the Exhibits hereto) has the following meaning:

"Additional Payments" means the Additional Payments described in Section 3.2(c) of this Agreement.

"Agreement" means the Project Finance Agreement, dated as of the date set forth on the first page hereof, by and between the State Water Board and the Recipient, including all exhibits and attachments thereto.

"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.

"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 Recipient, or another duly appointed representative. For all authorized representatives, a certified original of the authorizing resolution that designates the authorized representative, by title, must accompany the first payment request, and any other documents or requests required or allowed under this Agreement.

"Bank" means the California Infrastructure and Economic Development Bank.

"Bonds" means any series of bonds issued by the Bank all or a portion of the proceeds of which may be applied to fund the Project in whole or in part or that are secured in whole or in part by Installment Payments paid hereunder.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

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

"Construction" includes, for the purposes of expanded use projects, implementation (but not planning or design).

"CWSRF" means Clean Water State Revolving Fund.

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

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

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

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

"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, or, for expanded use projects, any implementation other than planning or design.

"Installment Payments" means Installment Payments due and payable by the Recipient to the State Water Board under this Agreement to repay the Project Costs, the amounts of which are set forth as Exhibit C hereto.

"Material Event" means any of the following events: (a) revenue shortfalls; (b) unscheduled draws on the reserve fund or the Enterprise Fund; (c) substitution of insurers, or their failure to perform; (d) adverse water quality findings by the Regional Water Quality Control Board; (e) litigation related to the System Revenues or to the Project, whether pending or anticipated.

"Net Revenues" means, for any Fiscal Year, so long as there may be outstanding System Obligations other than the Obligation, as such term is defined under the authorizing instruments for such System Obligations, and thereafter all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description attached hereto as Exhibit A and in the documents thereby incorporated by reference.

"Operations and Maintenance Costs" means, so long as outstanding System Obligations other than the Obligation are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," as most recently amended, the State Water Board's "Strategy for Implementing State Revolving Fund for Expanded Use Projects", as appropriate, and Board Resolution 2009-0027.

"Project" means the Project as described in Exhibit A and in the documents thereby incorporated by reference.

"Project Completion" for the purposes of a wastewater or water recycling project, means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first. For the purposes of all other projects, "Project Completion" means the date that all tasks in Exhibit A are completed to the reasonable satisfaction of the Division. This date shall be synonymous with the date specified in the "Initiation of Operation" form submitted as part of the Approval of Award package, if any.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance from the CWSRF under the federal Clean Water Act, which are allowable costs as defined under the Policy and which are reasonable, necessary and allocable by the Recipient to the Project under generally accepted accounting principles, plus capitalized interest. For the purposes of all other projects, "Project Costs" means those costs incurred by the Recipient for the planning, design, and implementation of the project as set forth in Exhibit A; this includes any monitoring, reporting, education and outreach, or direct administrative costs associated with these tasks and deemed necessary by the Division.

"Project Funds" means funds disbursed by the State Water Board to the Recipient for purposes of this Agreement.

"Recipient" means the recipient of Project Funds, as identified on the front page of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with generally accepted accounting principles, including all rates, fees and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and

revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"System" means for the purposes of a wastewater project, all wastewater collection, transport, treatment, storage and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed. For the purposes of a water recycling project, "System" means all wastewater, water recycling, and/or potable water collection, transport, treatment, storage and/or disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed. For the purposes of all other projects, "System" means all nonpoint source control or estuary enhancement facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

"System Obligations" means all senior, parity and subordinate obligations of the Recipient payable from Revenues as identified as of the date of this Agreement in Exhibit F and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations.

1.2 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 General Recipient Commitments.

The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.

2.2 Completion of Project.

The Recipient agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A.

2.3 Project Certification.

For wastewater or water recycling projects, one (1) year after initiation of operation, the Recipient shall certify to the State Water Board whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Recipient cannot certify that the Project meets such specifications and limitations at that time, the Recipient shall submit a corrective action report. The corrective action report shall include an estimate of the nature, scope, and cost of the corrective action, and a time schedule to expeditiously make all needed corrections, at the Recipient's expense, to allow affirmative certification for the Project.

For all other projects, the Recipient shall prepare a Project Certification that includes information collected by the Recipient in accordance with the Project monitoring and reporting plan, a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program. The Project Certification shall follow the general format provided by the Program Manager.

Failure to submit a Project Certification, an affirmative certification, or a corrective action report that meets the above requirements and is satisfactory to the Division within fifteen (15) months of the Project Completion date will cause the State Water Board to stop processing any pending or future applications for new financial assistance, withhold payments on any existing financial assistance, and begin administrative proceedings pursuant to sections 13267 and 13268 of the Water Code.

2.4 Award of Construction Contracts.

- (a) The Recipient agrees to award the prime construction contract no later than the date specified in Exhibit A.
- (b) The Recipient agrees to promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient agrees to make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

2.5 Notice.

The Recipient agrees to promptly notify the Division in writing of:

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Recipient's Revenues;
- (b) Any substantial change in scope of the Project. The Recipient 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;
- (c) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;

- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient 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 Recipient agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- (g) Any monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice;
- (i) Completion of Construction of the Project, and actual Project Completion; or
- (j) Material Events.

2.5.5 Findings and Challenge

Upon consideration of a voter initiative to reduce System Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy its Obligation under this Agreement and to operate and maintain the Project for its useful life. The Recipient agrees to challenge any such initiative that it finds will render it unable to satisfy either the Obligation or the covenant to operate and maintain, or both. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding any such challenge.

2.6 Project Access.

The Recipient agrees to insure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation. The Recipient acknowledges that the Project records and locations are public records.

2.7 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Recipient agrees to expeditiously initiate Project operations. The Recipient agrees to make all reasonable efforts to meet the Project Completion date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Project Completion date no less than 90 days prior to the Project Completion date. The Division will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

2.8 Continuous Use of Project; Lease or Disposal of Project.

The Recipient agrees that, except as provided in the Agreement, 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 funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.

2.9 Reports.

- (a) Quarterly Reports. The Recipient agrees to expeditiously provide status reports no less frequently than quarterly, starting with the execution of this Agreement. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed; a description of compliance with environmental requirements; a listing of change orders including amount, description of work, and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) As Needed Reports. The Recipient agrees to expeditiously provide, during the term of this Agreement, 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 CWSRF Program or to fulfill any reporting requirements of the federal government.

2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting.

The Recipient agrees to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. Reports must be submitted to the Division semiannually within ten (10) calendar days following April 1 and October 1 until such time as the "Notice of Completion" is issued. The Recipient agrees to comply with 40 CFR Section 33.301.

2.11 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient 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 assistance funds received under this Agreement;
 - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
 - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
 - (5) 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

- (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of six (6) years after repayment of Project Funds. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

2.12 Audit.

- (a) 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 Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.
- (b) Audit disallowances will be returned to the State Water Board.

2.13 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site. The sign shall include the following color logos:



(logos available from the Division) and the following disclosure statement:

Funding for this project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board.

The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.)

ARTICLE III FINANCING PROVISIONS

3.1 Purchase and Sale of Project.

The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement without further action on the part of the Recipient or the State Water Board.

3.2 Amounts Payable by the Recipient.

- (a) **Installment Payments.** Repayment of the Project Funds, together with all interest accruing thereon, shall be repaid in annual installments commencing on the date that is one (1) year after Completion of Construction, and shall be fully amortized by the date specified in Exhibit B.

The repayment amount is based on a standard fully amortized assistance amount with equal annual repayments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the repayment. Repayment calculations will be made beginning one (1) year after Completion of Construction and shall be fully amortized not later than the date specified in Exhibit B. Exhibit C is a CWSRF Payment Schedule based on the provisions of this article and an estimated disbursement schedule. The actual repayments will be based on actual disbursements.

Upon Completion of Construction and submission of necessary reports, the Division will prepare an appropriate CWSRF Payment Schedule and supply the same to the Recipient. The CWSRF Payment Schedule may be amended as necessary to accurately reflect amounts due under this Agreement. Any amended CWSRF Payment Schedule which is necessary will be prepared by the Division and furnished to the Recipient.

The Recipient agrees to make each installment payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred to the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other costs incurred. Penalties assessed will not change the principal balance of the financing Agreement. Such penalties will be treated as a separate receivable in addition to the annual payment due. 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 assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the repayment due date.

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

Attached as Exhibit C is a CWSRF Payment Schedule based on the provisions of this section and an estimated disbursement schedule. CWSRF Payment Schedule will be revised based on actual disbursements following Completion of Construction.

Each Installment Payment shall be paid by check and in lawful money of the United States of America.

The Recipient agrees that it shall not be entitled to interest earned on undisbursed project funds. Upon execution of this Agreement, the State Water Board shall encumber an amount equal to the Obligation. The Recipient hereby agrees to pay Installment Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement.

- (b) Project Costs. The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) Additional Payments. In addition to the Installment Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments shall be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

- (d) The Recipient may without penalty prepay all or any portion of the outstanding principal amount of the Obligation provided that the Recipient shall also pay at the time of such prepayment all accrued interest on the principal amount prepaid through the date of prepayment.

3.3 Obligation Absolute.

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

3.4 No Obligation of the State.

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

3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
 - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B. (Note that this Agreement will be amended to incorporate Approval of Award.)
 - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.9 above.
 - (4) The Recipient agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
 - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
 - (6) [reserved]
 - (7) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not

available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this contract are deferred because sufficient funds are unavailable, such disbursement will be made to the Recipient when sufficient funds do become available.

3.6 Withholding of Disbursements.

- (a) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
 - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - (2) The Recipient fails to maintain reasonable progress toward completion of the Project.
- (b) For the purposes of this section, the terms "material violation" or "threat of material violation" include, but are not limited to:
 - (1) Placement on the ballot of an initiative to reduce revenues securing this Agreement;
 - (2) Passage of such an initiative;
 - (3) Successful challenges by ratepayer(s) to process used by Recipient to set, dedicate, or otherwise secure revenues used for securing this Agreement; or
 - (4) Any other action or lack of action that may be construed as a material violation or threat thereof.

3.7 Pledge; Rates, Fees and Charges; Additional Debt.

- (a) Establishment of Enterprise Fund. In order to carry out its System Obligations, including the Obligation, the Recipient agrees and covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. This requirement applies to Recipients that are public agencies.
- (b) Pledge of Net Revenues. The Obligation hereunder shall be secured by a lien on and pledge of Net Revenues in priority as specified in Exhibit F. The Recipient hereby pledges and grants such lien on and pledge of Net Revenues to secure the Obligation, including payment of Installment Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding System Obligations, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the System Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the

Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt. This requirement applies to Recipients that are public agencies.

- (d) Rates, Fees and Charges. The Recipient agrees, to the extent permitted by law, to fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to the debt service on System Obligations, including the Obligation, for such Fiscal Year. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this section. The Recipient agrees to promptly challenge any initiative that would impair the Obligation and publicly state its opposition to any rate challenges. This requirement applies to Recipients that are public agencies.
- (e) Future Debt. The Recipient's future debt may not be senior to CWSRF debt. The Recipient's future local debt may be on parity with the CWSRF debt if the following conditions are met:
 - (1) The Recipient's net revenues pledged to pay all senior debts relying on the pledged revenue source are at least 1.2 times the highest year's debt service and net revenues pledged to pay all debts are at least 1.1 times the highest year's debt service; and
 - (2) One of the following conditions is met:
 - (A) The Recipient's proposed parity Additional Obligation is rated "A," or higher, by at least two nationally recognized rating agencies; or
 - (B) The Recipient is a disadvantaged community and the Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its parity debt; or
 - (C) The Recipient is a disadvantaged community and the Division determines that requiring the proposed Additional Obligations to be subordinate to the Recipient's Obligations hereunder will unduly restrict the Recipients from obtaining future system debt necessary for water quality improvements.

3.8 Financial Management System and Standards.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient 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) Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto.

3.9 Accounting and Auditing Standards.

The Recipient will maintain separate Project accounts in accordance with generally accepted accounting principles. The Recipient shall comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135(l).)

3.10 Federal or State Assistance.

If federal or state funding for Project Costs is made available to the Recipient from sources other than the CWSRF, the Recipient may retain such funding up to an amount which equals the Recipient's local share of Project Costs. To the extent allowed by requirements of other funding sources, any funding received in excess of the Recipient's local share, not to exceed the total amount of the CWSRF financing assistance, shall be remitted to the State Water Board to be applied to Installment Payments due hereunder.

ARTICLE IV TAX COVENANTS

4.1 Governmental Unit.

The Recipient is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof. The Recipient exclusively owns and, except as provided in Section 4.7 hereof, operates the Project.

4.2 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Project Funds on the costs of the Project. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of Project Funds to expenditures for the Project will proceed with due diligence.

4.3 Working Capital.

No operational expenditures of the Recipient or any related entity are being, have been or will be financed or refinanced with Project Funds.

4.4 Expenditure of Proceeds.

Project Funds shall be used exclusively for the following purposes: (i) architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project incurred prior to the commencement of construction and in an aggregate amount not exceeding twenty percent (20%) of the Project Funds, (ii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iii) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (iv) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Project Funds.

4.5 Private Use and Private Payments.

None of the Project Funds or the Project are, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). None of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of a person or entity other

than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use.

4.6 No Disproportionate or Unrelated Use.

None of the Project Funds or the Project are, have been or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

4.7 Management and Service Contracts.

With respect to management and service contracts, the determination of whether a particular use constitutes Private Use shall be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations and Revenue Procedure 97-13 and other applicable rules and regulations. As of the date hereof, none of the Project Funds or the Project are being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than Governmental Units) that involve the management of property or the provision of services that do not comply with the standards of the Treasury Regulations and Revenue Procedure 97-13.

Except to the extent the Recipient has received an opinion of counsel expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel") and satisfactory to the State Water Board and the Bank to the contrary, the Recipient will not enter into any management or service contracts with any person or entity that is not a Governmental Unit for services to be provided with respect to the Project except with respect to contracts where the following requirements are complied with: (i) the compensation is reasonable for the services rendered; (ii) the compensation is not based, in whole or in part, on a share of net profits from the operation of the Project; (iii) not more than twenty percent (20%) of the voting power of the Recipient in the aggregate may be vested in the service provider and its directors, officers, shareholders and employees and vice versa; (iv) any overlapping board members between the Recipient and the service provider must not include the chief executive officer or executive director of either, or their respective governing bodies; and (v):

- (a) At least ninety-five percent (95%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee which is a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. A fee shall not fail to qualify as a periodic fixed fee as a result of a one (1) time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is a single stated dollar amount. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and fifteen (15) years (twenty (20) years for "public utility property" within the meaning of Section 168(i)(10) of the Code);
- (b) At least eighty percent (80%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and ten (10) years. A one (1) time incentive award during the term of the contract similar to the award described in subsection (a) above is permitted under this option as well;
- (c) At least fifty percent (50%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or combination of a periodic fixed fee and a capitation fee. A capitation

fee is a fixed periodic amount for each person for whom the service provider or the Recipient assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons vary substantially; e.g., a fixed dollar amount payable per month to a service provider for each member of a plan for whom the provider agrees to provide all needed services for a specified period. A capitation fee may include a variable component of up to twenty percent (20%) of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. The term of the contract, including all renewal options, must not exceed five (5) years. The contract must be terminable by the Recipient on reasonable notice without penalty or cause, at the end of the third year of the contract;

- (d) All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fee. A per-unit fee is defined to mean a fee based on a unit of service provided as specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the program or the Recipient; e.g., a stated dollar amount for each specified procedure performed, car parked or passenger mile is a per-unit fee. The term of the contract, including all renewal options, must not exceed three (3) years. The contract must be terminable by the Recipient on reasonable notice, without penalty or cause, at the end of the second year of the contract term; or
- (e) All of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues or expenses of a facility. The term of the contract, including renewal options, must not exceed two (2) years. The contract must be terminable by the Recipient on reasonable notice without penalty or cause, at the end of the first year. This type of contract is permissible only with respect to contracts under which the service provider primarily provides services to third parties, and management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (e.g., a contract for general management services for the first year of the operations).

If the compensation terms of a management or service contract are materially revised, the requirements for compensation terms must be retested as of the date of the material revision and the management or service contract is treated as one that was newly entered into as of the date of the material revision.

A renewal option, for purposes of the foregoing, is defined to mean a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one (1) year periods absent cancellation by either party is not a renewal option, even if it is expected to be renewed.

A cancellation penalty is defined to include a limitation on the Recipient's ability to compete with the service provider, a requirement that the Recipient purchase equipment, goods or services from the service provider, and a requirement that the Recipient pay liquidated damages for cancellation of the contract; in comparison, a requirement effective on cancellation that the Recipient reimburse the service provider for ordinary and necessary expenses or a restriction against the Recipient hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the Recipient, such as an Installment Sale Agreement or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's length, that could operate to prevent the Recipient from terminating the contract (e.g., provisions under which the contract terminates if the management contract is terminated or that places substantial restrictions on the selection of a substitute service provider).

The service provider must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

4.8 No Disposition of Financed Property.

The Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

4.9 Useful Life of Project.

The economic useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth on Exhibit B hereto.

4.10 Installment Payments.

Installment Payments generally are expected to be derived from current revenues of the Recipient in each year, and current revenues are expected to equal or exceed debt service on the Obligation during each payment period.

4.11 No Other Replacement Proceeds.

The Recipient will not use any of the Project Funds to replace funds of the Recipient which are or will be used to acquire investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

4.12 Reimbursement Resolution.

See Exhibit E, Recipient Reimbursement Resolution.

4.13 Change in Use.

The Recipient reasonably expects to use all Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code, the Recipient will use the property financed or refinanced with Project Funds solely as set forth in the Agreement.

4.14 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Project Funds that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

4.15 No Notices or Inquiries From IRS.

The Recipient has not received any notice or inquiry by the Internal Revenue Service within the last ten (10) years regarding any obligations issued by the Recipient, the interest on which obligations is excludable from federal income taxation.

4.16 Amendments; Application.

The provisions in this Article may be amended or supplemented at any time to reflect changes in the Code upon obtaining an opinion of Nationally-Recognized Bond Counsel that such amendment will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to

Section 103 of the Code. The provisions in this Article shall apply to a Recipient only if any portion of the Project Funds is derived from proceeds of Bonds.

4.17 Reasonable Expectations.

To the best of my knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Article, the expectations of the Recipient as set forth in this Article are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Article.

ARTICLE V MISCELLANEOUS PROVISIONS

5.1 Covenants.

- (a) Tax Covenant. Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article IV attached hereto if any portion of the Project Funds is derived from proceeds of Bonds.
- (b) Disclosure of Financial Information, Operating Data and Other Information. The Recipient covenants to furnish certain financial and operating data pertaining to the Recipient that may be required to either: (i) enable the State Water Board to secure an Indenture in connection with this Agreement and issue any Bonds; or (ii) enable any underwriter to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission. The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure reports concerning the Recipient required by the terms of any financing other than this Agreement, including reports required to be filed in order to comply with Rule 10b-5, and to send such reports to the State Water Board at the same time such reports are sent to any dissemination agent, trustee, nationally recognized municipal securities information repository or other person. The foregoing covenant shall apply to a Recipient only if any portion of the Project Funds is derived from proceeds of Bonds.

5.2 Assignability.

The Recipient agrees and consents to any pledge, sale or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State in the form of a formal written amendment.

5.3 State Reviews and Indemnification.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless the State Water Board, the Bank and any trustee and their officers, employees and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct

or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the discharge of the Recipient's Obligation hereunder.

5.4 Termination; Immediate Repayment; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Recipient, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Installment Payments due hereunder, including accrued interest, and all penalty assessments due. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.
- (c) Where the Recipient is a private entity that has been determined to have violated an applicable prohibition in the Prohibition Statement below or has an employee who is determined by USEPA to have violated an applicable prohibition in the Prohibition Statement below that is either associated with performance under this aware or imputed to the Recipient using the standards and due process for imputing the conduct of an individual to an organization pursuant to 2 CFR part 180, the Recipient acknowledges and agrees that this Obligation may become immediately due and payable and that penalties up to \$175 million may be due by the Recipient to the State Water Board, in addition to any other criminal or civil penalties that may become due. The Recipient, its employees, its contractors, and any subrecipients or subcontractors may not engage in trafficking in persons, procure a commercial sex act, or use forced labor.

5.5 Income Restrictions.

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

5.6 Prevailing Wages.

The Recipient agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met.

5.7 Timeliness.

Time is of the essence in this Agreement.

5.8 Governing Law.

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

5.9 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

5.10 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.

5.11 Compliance with Law, Regulations, etc.

- (a) The Recipient 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 Recipient agrees that, to the extent applicable, the Recipient will:
- (1) Comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement;
 - (2) Comply with the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities", as amended from time to time;
 - (3) Comply with and require its contractors and subcontractors on the Project to comply with federal DBE requirements; and
 - (4) Comply with and require its contractors and subcontractors to comply with the list of federal laws certified to by the Recipient.

5.12 Conflict of Interest.

The Recipient certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

5.13 Damages for Breach Affecting Tax Exempt Status or Federal Compliance.

- (a) In the event that any breach of any of the provisions of this Agreement by the Recipient 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 Recipient shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the state due to such breach.
- (b) In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State to reimburse the federal government, the Recipient shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.

5.14 Disputes.

- (a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board'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 Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board'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 Recipient 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 Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

5.15 Independent Actor.

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

5.16 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

- (b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 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 Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

5.17 No Third Party Rights.

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

5.18 Operation and Maintenance; Insurance.

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

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable the Recipient to pay all remaining unpaid principal portions of the Installment Payments, the Recipient shall provide additional funds to restore or replace the damaged portions of the System.

5.19 Permits, Subcontracting, Remedies and Debarment.

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

Any subcontractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Representative during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Project Representative.

The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

The Recipient certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (b) Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

5.20 Recipient's Responsibility for Work.

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

5.21 Related Litigation.

Under no circumstances may a Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

5.22 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. (40 CFR 31.34, 31.36)

5.23 State Water Board Action; Costs and Attorney Fees.

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

5.24 Unenforceable Provision.

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

5.25 Useful Life.

The economic useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth in Exhibit B hereto.

5.26 Venue.

The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.


5.27 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

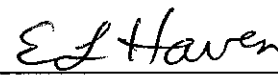
Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

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

CITY OF MODESTO:

By: 
Name: Greg Nyhoff
Title: City Manager
Date: 9-27-11

STATE WATER RESOURCES CONTROL BOARD:

By: 
Name: Elizabeth L. Haven
Title: Deputy Director
Division of Financial Assistance
Date: 10/4/11

APPROVED AS TO FORM



Roland R. Stevens
Assistant City Attorney

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

1. The Recipient agrees to start construction no later than the **estimated** date of **January 30, 2012**.
2. The **estimated** Completion of Construction date is hereby established as **June 1, 2015**.
3. The **estimated** Project Completion date is hereby established as **June 1, 2015**.
4. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than **December 1, 2015**, unless prior approval has been granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
5. The Project, commonly known as **Tertiary Treatment Phase 1B Project** generally consists of **constructing a 12.6 million gallon per day tertiary treatment plant, including three aeration basins, six membrane bioreactors, UV disinfection systems, pump stations, structures, and auxiliary equipment**, as more particularly described in the financial assistance application of the Recipient and the accepted plans and specifications for the Project, if any.
6. Incorporated by reference into this Agreement are the following documents:
 - (a) the Facilities Plan Approval Letter of **August 4, 2011**;
 - (b) the Preliminary Funding Commitment of **August 26, 2011**;
 - (c) the Final Plans & Specification, which are the basis for the construction Contract to be awarded by the Recipient (Agreement will be amendment to incorporate such document);
 - (d) the Waste Discharge Requirement Order No. **R5-2008-0059** and National Pollution Discharge Elimination System Permit No. **CA0079103**; and
 - (e) the Recipient's Reimbursement Resolution No. **2010-522** dated **December 14, 2010**.

These documents shall be binding on the Recipient, except where specifically superseded by the terms of this Agreement.

EXHIBIT B – PROJECT FINANCING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs, is **one hundred thirty million dollars and no cents (\$130,000,000.00)**.
2. Project Funding. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of **one hundred thirty million dollars and no cents (\$130,000,000.00)**.
3. Repayment and Interest Rate. The Recipient agrees to repay all Project Funds according to the schedule in Exhibit C at an interest rate of **two and six tenths percent (2.6%)** per annum and an Administrative Service Charge of **zero percent (0%)** per annum.
4. Contingent Principal Forgiveness. Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board agrees to forgive **three million dollars and no cents (\$3,000,000.00)** of the principal due under this Agreement. If, for any reason whatsoever within or outside the Recipient's control, or any combination thereof, the Recipient fails to satisfy the conditions under this Agreement, including but not limited to Exhibits G and H, the Recipient will be considered to have breached this Agreement, no principal will be forgiven, and all Project Funds will be due and payable immediately at the highest legal rate of interest.
4. The term of this agreement is from **August 26, 2011 to June 15, 2035**.
5. Budget costs are contained in the Project Cost Table, which is part of the Eligibility Determination Approval in Exhibit A.1. (This Agreement will be amended to incorporate such document.)
6. Preliminary budget costs are as follows:

Allowances (soft costs):	Planning	\$ 8,000,000
	Design	\$ 9,000,000
	Total	\$17,000,000

Construction costs and disbursements are not available until after this Agreement has been amended to incorporate the Approval of Award/Eligibility Determination Approval.

Any construction expenses incurred by the Recipient prior to such amendment of this Agreement are at the Recipient's risk. Failure to begin construction according to the timelines set forth in Exhibit A will require the Recipient to repay to the State Water Board all disbursed Project Funds, including Allowances.

EXHIBIT C - CWSRF PAYMENT SCHEDULE

See the attached preliminary CWSRF Payment Schedule dated **September 21, 2011**. The final CWSRF Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

Payment Schedule

Project No. 5175-210 - Modesto, City of
 Agreement: 11825 - based on Actual + Projected Disbursements

Principal is paid over: 20 Years
 Interest rate: 2.60000%

Tertiary Treatment Phase 1B

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate %	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	6/1/2016		0.00	2.6	8,930,922.22	8,930,922.22	8,930,922.22	127,000,000.00	0.00
2	6/1/2017		5,277,100.44	2.6	3,302,000.00	8,579,100.44	8,579,100.44	121,722,899.56	0.00
3	6/1/2018		5,414,305.05	2.6	3,164,795.39	8,579,100.44	8,579,100.44	116,308,594.51	0.00
4	6/1/2019		5,555,076.98	2.6	3,024,023.46	8,579,100.44	8,579,100.44	110,753,517.53	0.00
5	6/1/2020		5,699,508.98	2.6	2,879,591.46	8,579,100.44	8,579,100.44	105,054,008.55	0.00
6	6/1/2021		5,847,696.22	2.6	2,731,404.22	8,579,100.44	8,579,100.44	99,206,312.33	0.00
7	6/1/2022		5,999,736.32	2.6	2,579,364.12	8,579,100.44	8,579,100.44	93,206,576.01	0.00
8	6/1/2023		6,155,729.46	2.6	2,423,370.98	8,579,100.44	8,579,100.44	87,050,846.55	0.00
9	6/1/2024		6,315,778.43	2.6	2,263,322.01	8,579,100.44	8,579,100.44	80,735,068.12	0.00
10	6/1/2025		6,479,988.67	2.6	2,099,111.77	8,579,100.44	8,579,100.44	74,255,079.45	0.00
11	6/1/2026		6,648,468.37	2.6	1,930,632.07	8,579,100.44	8,579,100.44	67,606,611.08	0.00
12	6/1/2027		6,821,328.55	2.6	1,757,771.89	8,579,100.44	8,579,100.44	60,785,282.53	0.00
13	6/1/2028		6,998,683.09	2.6	1,580,417.35	8,579,100.44	8,579,100.44	53,786,599.44	0.00
14	6/1/2029		7,180,648.85	2.6	1,398,451.59	8,579,100.44	8,579,100.44	46,605,950.59	0.00
15	6/1/2030		7,367,345.72	2.6	1,211,754.72	8,579,100.44	8,579,100.44	39,238,604.87	0.00
16	6/1/2031		7,558,896.71	2.6	1,020,203.73	8,579,100.44	8,579,100.44	31,679,708.16	0.00
17	6/1/2032		7,755,428.03	2.6	823,672.41	8,579,100.44	8,579,100.44	23,924,280.13	0.00
18	6/1/2033		7,957,069.16	2.6	622,031.28	8,579,100.44	8,579,100.44	15,967,210.97	0.00
19	6/1/2034		8,163,952.95	2.6	415,147.49	8,579,100.44	8,579,100.44	7,803,258.02	0.00
20	6/1/2035		7,803,258.02	2.6	202,884.71	8,006,142.73	8,006,142.73	0.00	0.00
			127,000,000.00		44,360,872.87	171,360,872.87	171,360,872.87		0.00

EXHIBIT D — SPECIAL CONDITIONS

Environmental Special Conditions as follows:

1. The financing agreement will be terminated if the State Water Board does not receive a concurrence letter from National Oceanic and Atmospheric Administration (NOAA)-National Marine Fisheries Service (NMFS) for the Project by June 30, 2012. Division staff may approve up to a 120-day extension for good cause;
2. Project construction shall not start until the State Water Board received a concurrence letter from the NOAA—NMFS for the Project;
3. The Recipient shall implement mitigation measures E.2.1, E.2.2, E.3.1, E.3.2, E.6a, and E.6b from the Master Environmental Impact Report as identified in the Initial Study and Mitigated Negative Declaration to avoid impacts to migratory birds protected under the Migratory Bird Treaty Act; and
4. This Agreement will be amended prior to disbursement of construction funds to incorporate any conservation measures identified by the NOAA—NMFS for potential Project impacts to steelhead and their critical habitat.

Financial Special Conditions as follows:

1. The Recipient shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.25 times the total annual debt service;
2. The Recipient shall establish a Reserve Fund equal to one year's annual debt service prior to the construction completion date of the Project; and
3. The City is required to implement a public education program for two years beginning no later than January 2012 because the City received more than five percent (5%) opposition to their last wastewater rate increase.

EXHIBIT E — [Reserved]

EXHIBIT F — SCHEDULE OF SYSTEM OBLIGATIONS

Except for the following and the Obligation evidenced by this Agreement, the Recipient certifies that it has no outstanding System Obligations and that it is in compliance with all applicable additional debt provisions of the following:

The following outstanding debt is senior to the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
Not Applicable				

The following outstanding debt is on parity with the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
Bank of America Securities LLC, Series 2005A	3.0% to 5.25%	\$36,495,000	\$31,515,000 (as of 11/02/09)	11/01/2022
Citigroup Series 2006A	4.5% to 4.25%	\$16,535,000	\$16,535,000	11/01/2036

The following outstanding debt is subordinate to the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
Not Applicable				

EXHIBIT G — DAVIS BACON REQUIREMENTS

1. Contract and Subcontract provisions for Recipients

(a) The Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF the following clauses:

(1) Minimum wages.

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

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

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

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

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

EXHIBIT G — DAVIS BACON REQUIREMENTS

- (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Recipient to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and Recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

EXHIBIT G — DAVIS BACON REQUIREMENTS

- (2) Withholding. The Recipient, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

EXHIBIT G — DAVIS BACON REQUIREMENTS

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the State Water Board or EPA if requested by EPA, the State Water Board, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

EXHIBIT G — DAVIS BACON REQUIREMENTS

Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the

EXHIBIT G — DAVIS BACON REQUIREMENTS

applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Recipient, State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.

EXHIBIT G — DAVIS BACON REQUIREMENTS

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

- (a) **Contract Work Hours and Safety Standards Act.** The Recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Section 1, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
 - (3) **Withholding for unpaid wages and liquidated damages.** The Recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the

EXHIBIT G — DAVIS BACON REQUIREMENTS

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

- (b) In addition to the clauses contained in Section 1, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

3. Compliance Verification

- (a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The Recipient must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. The Recipient shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the Recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The Recipient must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The Recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training

EXHIBIT G — DAVIS BACON REQUIREMENTS

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

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

EXHIBIT H — FEDERAL CROSS-CUTTERS

The Recipient agrees to comply with the following federal laws applicable to recipients of CWSRF funding:

Environmental Authorities

1. Archeological and Historical Preservation Act of 1974, Pub. L. 86-523, as amended, Pub. L. 93-291 16 USC § 469a-1.
2. Clean Air Act, Pub. L. 84-159, as amended.
3. Coastal Barrier Resources Act, Pub. L. 97-348, 96 Stat. 1653; 16 USC § 3501 et seq.
4. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 USC § 1451 et seq.
5. Endangered Species Act, Pub. L. 93-205, as amended; 16 USC § 1531 et seq..
6. Environmental Justice, Executive Order 12898.
7. Floodplain Management, Executive Order, 11988 as amended by Executive Order 12148.
8. Protection of Wetlands, Executive Order 11990, as amended by Executive Order No. 12608.
9. Farmland Protection Policy Act, Pub. L. 97-98; 7 USC § 4201 et seq.
10. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
11. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 80 Stat. 917 (1966) 16 USC § 470 et seq.
12. Safe Drinking Water Act, Pub. L. 93-523, as amended; 42 USC § 300f et seq.
13. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 82 Stat. 913; 16 USC § 1271 et seq.
14. Essential Fish Habitat Consultation. Pub. L. 94-265, as amended, 16 USC § 1801 et seq.
15. Recycled Materials. Executive Order 13101; Section 6002 Resource Conservation and Recovery Act – 42 USC § 6962.

Economic and Miscellaneous Authorities

1. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372/ 42 USC § 3331 et seq.
2. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368; 40 CFR Part 31.
3. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655

EXHIBIT H — FEDERAL CROSS-CUTTERS

4. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Excluded Parties List System can be found at www.epls.gov. The Recipient represents and warrants that it has included a term or conditions requiring compliance with this provision in all of its contracts and subcontracts. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
5. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, EO 13202, as amended by EO 13208.
6. Hotel and Motel Fire Safety Act of 1990 (PL 101-391, as amended). All conference, meeting, convention, or training funded in whole or in part with federal funds shall comply with the protection and control guidelines of this act. Recipients may search <http://www.usfa.dhs.gov/applications/hotel/>.
7. Records and financial reporting. 40 CFR Part 31.
8. Copyright. 40 CFR Part 31.
9. No Recipient or subrecipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board. (2011 Cap Grant)
10. Where the Recipient received 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), the Recipient agrees to notify the State Water Board. The Recipient agrees to provide certain executive compensation information to the State Water Board, upon request.

Social Policy Authorities

1. Age Discrimination Act of 1975, Pub. L. 94-135; 42 USC § 6102.
2. Race Discrimination. Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.1; 42 USC § 2000d; 40 CFR Part 7.
3. Sex Discrimination. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act); 33 USC § 1251; 40 CFR Part 7.
4. Disability Discrimination. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250); 29 USC § 794; 40 CFR Part 7.
5. Equal Employment Opportunity, Executive Order 11246.
6. Disadvantaged Business Enterprises. 40 CFR Part 33. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts.



CITY OF MODESTO
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

PROJECT FINANCE AGREEMENT
STATE REVOLVING FUND PROJECT NO. C-06-5175-210
AGREEMENT NO. 11-825-550

AMENDMENT NO. 1

AMOUNT: ~~\$130,000,000~~ \$128,161,776

TERM DATES: AUGUST 26, 2011 – JUNE 1, 2035

The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement, originally executed on October 4, 2011 and incorporated herein:

Changes made in this amendment are shown as follows in the attached Exhibits:

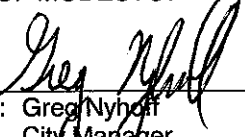
- Exhibit A – Scope of Work & Incorporated Documents (1 page attached)*
- Exhibit A.1 – Approval of Award/Eligibility Determination Approval/Final Budget (4 page attached)**
- Exhibit B – Project Financing Amount (1 page attached)*
- Exhibit C – CWSRF Payment Schedule (2 pages attached)*
- Exhibit D – Special Conditions (1 page attached)*

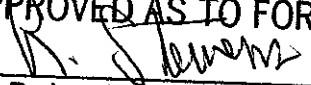
* Except as otherwise noted, text deletions are displayed as strike through text (i.e., strike out)

** Entire Exhibit added.

All other terms and conditions shall remain the same.

CITY OF MODESTO:

By: 
Name: Greg Nyhoff
Title: City Manager
Date: 5-10-12

APPROVED AS TO FORM

Roland R. Stevens
Assistant City Attorney

STATE WATER RESOURCES CONTROL BOARD:


By: 
Name: Elizabeth L. Haven
Title: Deputy Director, Division of Financial Assistance
Date: 5/11/12

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

1. The Recipient agrees to start construction no later than the estimated date of ~~January 30, 2012~~ **May 24, 2012**.
2. The ~~estimated~~ Completion of Construction date is hereby established as June 1, 2015.
3. The ~~estimated~~ Project Completion date is hereby established as June 1, ~~2015~~ **2016**.
4. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than December 1, 2015, unless prior approval has been granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
5. The Project, commonly known as ~~Tertiary Treatment Phase 1B~~ **Phase 2 Biological Nutrient Removal (BNR) Tertiary Treatment** Project generally consists of constructing a 12.6 million gallon per day tertiary treatment plant, including three aeration basins, six membrane bioreactors, UV disinfection systems, pump stations, structures, and auxiliary equipment, as more particularly described in the financial assistance application of the Recipient and the accepted plans and specifications for the Project, if any.
6. Incorporated by reference into this Agreement are the following documents:
 - (a) the Facilities Plan Approval Letter of August 4, 2011;
 - (b) the Preliminary Funding Commitment of August 26, 2011;
 - (c) the Final Plans & Specification **received on March 16, 2012 and Addendum Nos. 1, 2, 3, 4, 5, and 6, issued on November 18, 2011, December 9, 2011, December 22, 2011, January 6, 2012, January 13, 2012, and January 18, 2012, respectively**, which are the basis for the construction Contract to be awarded by the Recipient **to GSE Construction Company, Inc.** (~~Agreement will be amendment to incorporate such document~~);
 - (d) the Waste Discharge Requirement Order No. R5-2008-0059**2010-0040** and National Pollution Discharge Elimination System Permit No. CA0079103; and
 - (e) the Recipient's Reimbursement Resolution No. ~~2010-522~~**2011-127** dated ~~December 14, 2010~~ **April 12, 2011**.

These documents shall be binding on the Recipient, except where specifically superseded by the terms of this Agreement.

**EXHIBIT A.1 – APPROVAL OF AWARD (AOA) /ELIGIBILITY DETERMINATION APPROVAL/
 FINAL BUDGET**

Table 1: Approved Construction Bid Amount:

CONTRACTOR	AMOUNT BID	APPROVED COSTS
GSE Construction Company, Inc.	100,554,397	100,554,397

1 - CONSTRUCTION BUDGET

Table 2: Approved Construction Budget:

PROJECT COST TABLE	
Applicant:	City of Modesto
Project Number:	C-06-5175-210
Project Name:	Tertiary Treatment - Phase 2
TYPE OF WORK	APPROVED CONSTRUCTION BUDGET
	Total Costs
A. Construction	
1. GSE Construction Company, Inc.	\$100,554,397
Subtotal	\$100,554,397
B. Allowances (Soft Costs)	
1. Planning	\$156,883
2. Design	\$9,969,370
3. Construction Management	\$15,385,635
4. Administration	\$2,000,000
5. Value Engineering	\$95,491
Subtotal	\$27,607,379
TOTAL (Subtotal A + Subtotal B)	\$128,161,776

Note: Adjustments may be made between Line Items on the Final Disbursement.

2 - PROJECT ELIGIBILITY DETERMINATION

The Eligibility Determination and Conditions of Approval identified below are based on the review of:

- Facilities Plan Approval (FPA) letter dated August 4, 2011;
- Stamped and signed Final Plan and Specifications (P&S) for the Project received on March 16, 2012; and
- Addendums No. 1, 2, 3, 4, 5, and 6, issued on November 18, 2011, December 9, 2011, December 22, 2011, January 6, 2012, January 13, 2012, and January 18, 2012, respectively.

**EXHIBIT A.1 – APPROVAL OF AWARD (AOA) /ELIGIBILITY DETERMINATION APPROVAL/
 FINAL BUDGET**

The Eligibility Determination for the Bid Items shown in the Schedule of Values provided by the Recipient is as follows:

Table 3: Eligibility Determination Agreement:

Bid Item	Description	Percent Eligibility
1	Mobilization/Demobilization	100%
2	Workers Protection and Safety/Shoring	100%
5	SCADA Works	100%
6	Allowance for Security Systems	100%
7	Allowance for Telephone and Public Address (PA) System	100%
8	Electric Utility Connection Fee Allowance	100%
9	Allowance for Furniture for the Operations Center	100%
10	MBR Equipment purchased on 2010/01/26 (see condition 1)	100%
11	UV Disinfection Equipment purchased on 2010/01/26 (see condition 1)	100%
12	Removal and Disposal of Compost-overs	100%
13	Relocation of Unscreened Compost Material	100%
14	Relocation of Unscreened Compost Windrows Material	100%
15	Cement used for Compost Windrow Area Impermeable Layer	100%
16	Soil-Stabilization for Compost Windrow Area Impermeable Layer	100%
17	All Other Work Associated with the Relocation of the Compost Facilities not included in Bid Items 12 through 16	100%
18	Existing Road Overlay	100%
19	Tertiary Effluent Pipeline	100%
20	All Work in Accordance with the Contract Documents, not included in Bid Items 1 through 19 (Site Preparations, Site Utilities, Buildings, Operation Center, etc.)	100%

Note: Bid items as shown in the schedule of values provided by the recipient

Eligibility Determination Conditions of Approval

1. Equipment was purchased prior to the CWSRF funding commitment. Section X.H. of the CWSRF Policy allows eligible equipment procurement costs incurred before the effective date of the Financing Agreement to be eligible for CWSRF reimbursement.
2. Necessary insurance directly related to the Construction Contract and extending throughout the period of the Construction Contract will be eligible for CWSRF financing. This includes builder risk insurance, public liability insurance, fire, and Project specific insurance.
3. Earthquake insurance and "Act of God" insurance are ineligible for funding.
4. Asphalt pavement, corresponding improvements, and excavation and refill materials due to trenching are limited to replacement of the trench width plus one foot on each side of the trench disturbed due to the construction work of the subject contract only. Full lane width paving or slurry seal is eligible only if required by Ordinance or Code.
5. The cost of local permits and licenses other than those issued by the Recipient are eligible for CWSRF financing.

EXHIBIT A.1 – APPROVAL OF AWARD (AOA) /ELIGIBILITY DETERMINATION APPROVAL/
FINAL BUDGET

6. The Division may approve Change Orders at the time of Final Disbursement, provided that such changes do not: (1) increase the maximum amount of the Financing Agreement based on Table 2 Approved Construction Budget, (2) increase the Term of the Financing Agreement, or (3) result in a substantial change in the Project scope.
7. Contingencies are not eligible.
8. Review of the P&S by the Division is conducted to determine eligibility and administrative compliance with the Policy. Issuance of the AOA does not relieve the Recipient and the design engineer of their legal liability for the adequacy of the design.
9. The review of the P&S is for eligibility and administrative purposes as well as to assess conformance with the Project Report and FPA.

3 - PROJECT PERFORMANCE STANDARDS

Project Objectives

1. The Project must meet the intended goals and objectives. All components of the Project shall meet the material, workmanship, and performance standards identified in the contract P&S and shall be operational at the time of Project Performance Certification.
2. The Project must have a level of staffing sufficient to properly operate and maintain the facilities. The Recipient must ensure that the funded facilities will be properly operated and maintained for the estimated life of the Project.
3. The Recipient's Project shall meet all conditions and requirements contained in the Waste Discharge Requirements (WDR) and the National Pollution Elimination Discharge System (NPDES) Permit, if applicable.

Project Performance Standards during Certification Period

4. Major mechanical components and process units shall be tested for the maximum design flow rates and wastewater concentrations, where feasible, to determine that the Project Performance objectives are met.

Data Collected for the Project

5. The existing Operation and Maintenance Tracking System must be updated or a new Operation and Maintenance Tracking System must be established to include all new mechanical and electrical equipment, spare parts, and a record of preventative and corrective maintenance tasks scheduled and performed.

Project Performance Report (PPR) and Certification

6. One year after the Initiation of Operation, the Recipient shall prepare a PPR that includes the Individual Component Process Data and certify whether the Project meets the Project Performance Standards. The PPR must include a description of the test conditions, comparison of the actual performance of the funded Project with expected performance, and the Project's ability to meet objectives. The PPR should assess individual unit processes for possible operational adjustments to optimize plant reliability.

EXHIBIT A.1 – APPROVAL OF AWARD (AOA) /ELIGIBILITY DETERMINATION APPROVAL/
FINAL BUDGET

7. If at the end of the Project Performance Certification period the Recipient is unable to certify the Project, the Recipient must submit a Corrective Action Report (CAR). For components of the Project not meeting the material, workmanship or performance standards in the construction contract P&S, the Recipient must provide a discussion of probable cause and recommended corrective measures. The CAR shall provide estimates of the nature, scope, cost, and schedule to implement the necessary corrective measures. The Recipient understands that the cost of corrective measures is not eligible for CWSRF financial assistance.

8. If the Recipient does not submit a PPR and the signed Certificate of Performance, or a CAR, within fifteen (15) months of the Initiation of Operation date, the Division will stop processing any pending or future applications for new CWSRF funding or bond funded grants, and withhold payments on any existing financing assistance that the Recipient may have with the State Water Board until the PPR and Certification, or CAR, are submitted. The Division may use any other legal means to obtain the PPR and Certificate of Performance, or CAR, from the Recipient.

EXHIBIT B – PROJECT FINANCING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs, is ~~one hundred thirty million~~ **one hundred thirty three million, one hundred eighty nine thousand, four hundred ninety six** dollars and no cents (~~(\$130,000,000.00)~~ **(\$133,189,496.00)**).
2. Project Funding. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of ~~one hundred thirty million~~ **one hundred twenty eight million, one hundred sixty one thousand, seven hundred seventy six** dollars and no cents (~~(\$130,000,000.00)~~ **(\$128,161,776.00)**).
3. Repayment and Interest Rate. The Recipient agrees to repay all Project Funds according to the schedule in Exhibit C at an interest rate of two and six tenths percent (2.6%) per annum and an Administrative Service Charge of zero percent (0%) per annum.
4. Contingent Principal Forgiveness. Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board agrees to forgive three million dollars and no cents (\$3,000,000.00) of the principal due under this Agreement. ~~If, for any reason whatsoever within or outside the Recipient's control, or any combination thereof, the Recipient fails to satisfy the conditions under this Agreement, including but not limited to Exhibits G and H, the Recipient will be considered to have breached this Agreement, no principal will be forgiven, and all Project Funds will be due and payable immediately at the highest legal rate of interest.~~ **If the Recipient's failure to meet its obligations under this Agreement is outside the Recipient's control, the Recipient will be entitled to an extension in time to perform its obligations equal to the length of delay attributable to such causes, prior to being considered to have breached this Agreement.**
4. The term of this agreement is from August 26, 2011 to June 15, 2035.
5. Budget costs are contained in the Project Cost Table, which is part of the Eligibility Determination Approval in Exhibit A.1. ~~(This Agreement will be amended to incorporate such document.)~~
6. Preliminary budget costs are as follows:

Allowances (soft costs):	Planning	\$ 8,000,000
	Design	\$ 9,000,000
	Total	\$17,000,000

~~Construction costs and disbursements are not available until after this Agreement has been amended to incorporate the Approval of Award/Eligibility Determination Approval.~~

~~Any construction expenses incurred by the Recipient prior to such amendment of this Agreement are at the Recipient's risk. Failure to begin construction according to the timelines set forth in Exhibit A will require the Recipient to repay to the State Water Board all disbursed Project Funds, including Allowances.~~

EXHIBIT C - CWSRF PAYMENT SCHEDULE

See the attached preliminary CWSRF Payment Schedule dated ~~September 21, 2011~~ **May 8, 2012**. The final CWSRF Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

Payment Schedule

Project No. 5175-210 - Modesto, City of
 Agreement: 11825 - based on Projected Disbursements

Tertiary Treatment Phase 1B

Principal is paid over: 20 Years
 Interest rate: 2.60000%

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate %	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	6/1/2016		332,857.92	2.6	8,076,286.22	8,409,144.14	8,409,144.14	124,828,918.08	0.00
2	6/1/2017		5,163,592.27	2.6	3,245,551.87	8,409,144.14	8,409,144.14	119,665,325.81	0.00
3	6/1/2018		5,297,845.67	2.6	3,111,298.47	8,409,144.14	8,409,144.14	114,367,480.14	0.00
4	6/1/2019		5,435,589.66	2.6	2,973,554.48	8,409,144.14	8,409,144.14	108,931,890.48	0.00
5	6/1/2020		5,576,914.99	2.6	2,832,229.15	8,409,144.14	8,409,144.14	103,354,975.49	0.00
6	6/1/2021		5,721,914.78	2.6	2,687,229.36	8,409,144.14	8,409,144.14	97,633,060.71	0.00
7	6/1/2022		5,870,684.56	2.6	2,538,459.58	8,409,144.14	8,409,144.14	91,762,376.15	0.00
8	6/1/2023		6,023,322.36	2.6	2,385,821.78	8,409,144.14	8,409,144.14	85,739,053.79	0.00
9	6/1/2024		6,179,928.74	2.6	2,229,215.40	8,409,144.14	8,409,144.14	79,559,125.05	0.00
10	6/1/2025		6,340,606.89	2.6	2,068,537.25	8,409,144.14	8,409,144.14	73,218,518.16	0.00
11	6/1/2026		6,505,462.67	2.6	1,903,681.47	8,409,144.14	8,409,144.14	66,713,055.49	0.00
12	6/1/2027		6,674,604.70	2.6	1,734,539.44	8,409,144.14	8,409,144.14	60,038,450.79	0.00
13	6/1/2028		6,848,144.42	2.6	1,560,999.72	8,409,144.14	8,409,144.14	53,190,306.37	0.00
14	6/1/2029		7,026,196.17	2.6	1,382,947.97	8,409,144.14	8,409,144.14	46,164,110.20	0.00
15	6/1/2030		7,208,877.27	2.6	1,202,266.87	8,409,144.14	8,409,144.14	38,955,232.93	0.00
16	6/1/2031		7,396,308.08	2.6	1,012,836.06	8,409,144.14	8,409,144.14	31,558,924.85	0.00
17	6/1/2032		7,588,612.09	2.6	820,532.05	8,409,144.14	8,409,144.14	23,970,312.76	0.00
18	6/1/2033		7,785,916.01	2.6	623,228.13	8,409,144.14	8,409,144.14	16,184,396.75	0.00
19	6/1/2034		7,988,349.82	2.6	420,794.32	8,409,144.14	8,409,144.14	8,196,046.93	0.00
20	6/1/2035		8,196,046.93	2.6	213,097.22	8,409,144.15	8,409,144.15	0.00	0.00
			125,161,776.00		43,021,106.81	168,182,882.81	168,182,882.81		0.00

EXHIBIT D – SPECIAL CONDITIONS

Environmental Special Conditions as follows:

1. ~~The financing agreement will be terminated if the State Water Board does not receive a concurrence letter from National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) for the Project by June 30, 2012. Division staff may approve up to a 120-day extension for good cause;~~
2. ~~Project construction shall not start until the State Water Board received a concurrence letter from the NOAA NMFS for the Project;~~
3. ~~1. The Recipient shall implement mitigation measures E.2.1, E.2.2, E.3.1, E.3.2, E.6a, and E.6b from the Master Environmental Impact Report as identified in the Initial Study and Mitigated Negative Declaration to avoid impacts to migratory birds protected under the Migratory Bird Treaty Act; and~~
4. ~~This Agreement will be amended prior to disbursement of construction funds to incorporate any conservation measures identified by the NOAA NMFS for potential Project impacts to steelhead and their critical habitat;~~

Financial Special Conditions as follows:

1. The Recipient shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.25 times the total annual debt service;
2. The Recipient shall establish a Reserve Fund equal to one year's annual debt service prior to the construction completion date of the Project; and
3. The City is required to implement a public education program for two years beginning no later than January 2012 because the City received more than five percent (5%) opposition to their last wastewater rate increase.
4. **The Recipient agrees to adhere to the provisions of section 2.11(b) of this Agreement for a minimum of thirty-six (36) years after Project Completion. In the event of an inconsistency between this requirement and the term of this Agreement, the Recipient agrees that this requirement survives the term of this Agreement.**

EXHIBIT H — FEDERAL CROSS-CUTTERS

7. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.
8. Anti-Lobbying Provisions (40 CFR Part 34). The Recipient shall ensure that no funds under this Agreement are used to engage in lobbying of the federal government or in litigation against the United States unless authorized under existing law. The Recipient shall abide by 2 CFR 225 (OMB Circular A-87) (or, if not applicable, other parallel requirements), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities. The Recipient agrees to comply with 40 CFR Part 24, New Restrictions on Lobbying. The Recipient agrees to submit certification and disclosure forms in accordance with these provisions. In accordance with the Byrd Anti-Lobbying Amendment, any Recipient who makes a prohibited expenditure under 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. The Recipient shall abide by its respective 2 CFR 200, 225, or 230, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.
9. Anti-Litigation Provisions (2 CFR 220, 225, or 230).
10. Trafficking Victims Protection Act of 2000. The Recipient, its employees, its contractors, and its subcontractors may not engage in trafficking of persons, procure a commercial sex act, use forced labor in the performance of the Project. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The State Water Board may unilaterally terminate this Agreement without penalty, if a subrecipient that is a private entity is determined to have violated the foregoing.
11. ACORN Prohibition. None of the Project Funds used in this Agreement may be used for contracts or subcontracts to ACORN.